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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
MELINDA SERIN, JUDSON RUSS, LONG SOU
LIM, PERI KETTLER, GORDON REDNER, and
THOMAS J. SMITH,

Plaintiffs,

Index No.

-against-

06-Civ-1625

NORTHERN LEASING SYSTEMS, Inc., JAY COHEN,
RICH HAHN AND SARA KRIEGER,
Defendants.

-----x

October 12, 2010

10:10 a.m.

Deposition of JOSEPH I. SUSSMAN, held
at the offices of Moses & Singer LLP, 405
Lexington Avenue, New York, New York, pursuant to
subpoena, before Barbara Driscoll, a Notary Public
of the State of New York.

HUDSON REPORTING & VIDEO

1-800-310-1769

Page 3

1
2 IT IS HEREBY STIPULATED AND AGREED, by
3 and between the attorneys for the respective
4 parties herein, that filing and sealing be and the
5 same are hereby waived.
6

7 IT IS FURTHER STIPULATED AND AGREED
8 that all objections, except as to the form of the
9 question, shall be reserved to the time
10 of the trial.
11

12 IT IS FURTHER STIPULATED AND AGREED that the
13 within deposition may be signed and sworn to
14 before any officer authorized to administer an
15 oath, with the same force and effect as if signed
16 and sworn to before the officer before whom the
17 within deposition was taken.
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Page 2

1
2 A P P E A R A N C E S:

3
4 CHITTUR & ASSOCIATES, P.C.

5 Attorneys for Plaintiffs

6 286 Madison Avenue

7 New York, New York 10017

8 BY: KEITH L. ALTMAN, ESQ.

9 CHRISTIAN CHITTUR, ESQ. (a.m. only)
10

11
12 MOSES & SINGER LLP

13 Attorneys for Defendants

14 The Chrysler Building

15 405 Lexington Avenue

16 New York, New York 10174-1299

17 BY: JENNIFER NIGRO, ESQ.
18

19
20 ALSO PRESENT:

21 Andrey Strutinskiy, videographer
22
23
24
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Page 4

1
2 THE VIDEOGRAPHER: Today is October 12,
3 2010. Our time is 10:09 a.m.

4 This is a deposition in a case in the
5 United States District Court for the Southern
6 District of New York, Melinda Serin, et al.,
7 versus Northern Leasing Systems Incorporated,
8 et al., docket number 06 CV 1625.

9 Please everybody introduce themselves
10 for the record.

11 MR. ALTMAN: Keith Altman, counsel for
12 plaintiffs.

13 MS. NIGRO: Jennifer Nigro, Moses &
14 Singer, counsel for defendants and the
15 witness.

16 THE WITNESS: Joseph Sussman as the
17 witness.

18 THE VIDEOGRAPHER: I am Andrey
19 Strutinskiy, the videographer for this
20 deposition.
21
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23
24
25

1 (Pages 1 to 4)

New York
212-273-9911

Hudson Reporting & Video
Nationwide 800-310-1769

New Jersey
732-906-2078

<p style="text-align: right;">Page 5</p> <p>1 SUSSMAN</p> <p>2 JOSEPH I. SUSSMAN, called as a</p> <p>3 witness, having affirmed to tell the truth, was</p> <p>4 examined and testified as follows:</p> <p>5 EXAMINATION BY</p> <p>6 MR. ALTMAN:</p> <p>7 Q. Please state your name.</p> <p>8 A. Joseph I. Sussman.</p> <p>9 Q. Please state your business address.</p> <p>10 A. 132 West 31st Street, Suite 1320, New</p> <p>11 York, New York 10001.</p> <p>12 Q. Mr. Sussman, how are you today?</p> <p>13 A. Very good. Thank you.</p> <p>14 Q. My name is Keith Altman. I represent</p> <p>15 the plaintiffs in the action of Serin versus</p> <p>16 Northern Leasing. I assume you're aware of that?</p> <p>17 A. Yes.</p> <p>18 Q. Have you ever had your deposition taken</p> <p>19 before?</p> <p>20 A. No.</p> <p>21 Q. Have you taken depositions before?</p> <p>22 A. Yes.</p> <p>23 Q. You're generally familiar with the</p> <p>24 process. I don't think we need to waste time</p> <p>25 going through that, but one thing that is very</p>	<p style="text-align: right;">Page 7</p> <p>1 SUSSMAN</p> <p>2 agreement with Moses & Singer for them</p> <p>3 representing you today?</p> <p>4 A. No.</p> <p>5 Q. Are you paying Moses & Singer for them</p> <p>6 representing you here today?</p> <p>7 A. No.</p> <p>8 Q. Do you know who is paying Moses &</p> <p>9 Singer for your representation today?</p> <p>10 A. Yes.</p> <p>11 Q. Who is that?</p> <p>12 A. Northern Leasing.</p> <p>13 Q. When did Moses & Singer begin to</p> <p>14 represent you in this matter?</p> <p>15 A. I requested Moses & Singer or -- I</p> <p>16 requested Northern Leasing to represent me -- to</p> <p>17 request Moses & Singer to represent me while upon</p> <p>18 -- receiving -- being served with the subpoenas.</p> <p>19 Q. Before that time, they had not provided</p> <p>20 representation to you?</p> <p>21 A. Correct.</p> <p>22 Q. Are you being paid to be here today?</p> <p>23 A. No. What I mean is, I am not</p> <p>24 specifically being paid to be here today.</p> <p>25 Q. You say --</p>
<p style="text-align: right;">Page 6</p> <p>1 SUSSMAN</p> <p>2 important to me, if I ask you a question and you</p> <p>3 answer it, I will assume that you understand the</p> <p>4 question. If you don't understand, please let</p> <p>5 know.</p> <p>6 Before we begin, I am trying to</p> <p>7 understand the capacity in which you're here</p> <p>8 testifying today. Are you here as an employee of</p> <p>9 Northern Leasing Systems?</p> <p>10 A. No.</p> <p>11 Q. Are you as an employee of Northern</p> <p>12 Leasing Systems?</p> <p>13 A. No.</p> <p>14 Q. What is the nature of Moses & Singer</p> <p>15 representing you as an independent individual in</p> <p>16 this case?</p> <p>17 MS. NIGRO: That is probably a question</p> <p>18 for me if you want it on the record or off.</p> <p>19 MR. ALTMAN: Off the record.</p> <p>20 THE VIDEOGRAPHER: The time is now</p> <p>21 10:11 a.m. We are off the record.</p> <p>22 (Off the record discussion.)</p> <p>23 THE VIDEOGRAPHER: The time is 10:12</p> <p>24 a.m. We are back on the record.</p> <p>25 Q. Mr. Sussman, did you sign a retainer</p>	<p style="text-align: right;">Page 8</p> <p>1 SUSSMAN</p> <p>2 A. I am not billing for my time.</p> <p>3 Q. Are you being paid in any other way</p> <p>4 other than billing for today?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 You mean as an expert?</p> <p>7 MR. ALTMAN: In any capacity.</p> <p>8 MS. NIGRO: Relevance, but --</p> <p>9 A. I am not being paid to be here today as</p> <p>10 a witness. I am being paid by Northern Leasing to</p> <p>11 do legal work for them, but I am not billing</p> <p>12 Northern Leasing for my time today in addition to</p> <p>13 the work that I bill them -- that I provide and</p> <p>14 bill them for.</p> <p>15 MS. NIGRO: Are you asking him whether</p> <p>16 he has being paid to be here today in this</p> <p>17 case?</p> <p>18 MR. ALTMAN: Yes.</p> <p>19 A. No.</p> <p>20 Q. That is what I am getting at.</p> <p>21 A. I wanted to answer the question</p> <p>22 correctly.</p> <p>23 Q. I am only trying to understand.</p> <p>24 Basically, you're here on your own time. You're</p> <p>25 not being compensated in any way for the time</p>

2 (Pages 5 to 8)

<p style="text-align: right;">Page 9</p> <p>1 SUSSMAN</p> <p>2 you're spending here today in this deposition?</p> <p>3 A. Correct.</p> <p>4 Q. What did you do to prepare for today's</p> <p>5 deposition?</p> <p>6 A. I met with Jennifer yesterday.</p> <p>7 Q. How much time did you spend meeting</p> <p>8 with her?</p> <p>9 A. Three hours about, approximately, three</p> <p>10 or four hours. I don't remember.</p> <p>11 Q. What else did you do to prepare for</p> <p>12 today's deposition?</p> <p>13 A. In addition to meeting with counsel?</p> <p>14 Q. Yes.</p> <p>15 A. Not much else.</p> <p>16 Q. You produced documents in this case,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. Who selected the documents to be</p> <p>20 produced in this case?</p> <p>21 A. I did.</p> <p>22 Q. Did you have any assistance with</p> <p>23 anybody in reviewing what documents to produce?</p> <p>24 A. I believe I sought some assistance from</p> <p>25 some of my staff, but for the most part, it was</p>	<p style="text-align: right;">Page 11</p> <p>1 SUSSMAN</p> <p>2 here and we will probably have a lot of confusion</p> <p>3 talking about those two different issues because</p> <p>4 this is a case about cases.</p> <p>5 What I want to understand is, was the</p> <p>6 basis of the privilege about the underlying cases</p> <p>7 of the plaintiffs or about this case where the</p> <p>8 plaintiffs are suing Northern Leasing or both?</p> <p>9 A. I would say both.</p> <p>10 Q. Have you been paid in any way by any</p> <p>11 individuals for anything you have done with</p> <p>12 respect to the Serin versus Northern Leasing case?</p> <p>13 A. Can you clarify what you mean by</p> <p>14 individuals?</p> <p>15 Q. Have you done any work for Northern</p> <p>16 Leasing in the Serin versus Northern Leasing case?</p> <p>17 A. Yes.</p> <p>18 Q. Are you counsel of record in the Serin</p> <p>19 versus Northern Leasing case?</p> <p>20 A. If I recall correctly, I entered into</p> <p>21 oral arguments with Judge Robinson with counsel</p> <p>22 for Milberg Weiss and I think my appearance was</p> <p>23 entered on the record. That is the extent of my</p> <p>24 knowledge about my formal -- whether I am formally</p> <p>25 counsel of record or not.</p>
<p style="text-align: right;">Page 10</p> <p>1 SUSSMAN</p> <p>2 myself. I collected the documents.</p> <p>3 Q. You produced documents to plaintiffs in</p> <p>4 this case, correct?</p> <p>5 A. Yes.</p> <p>6 Q. You produced them directly to</p> <p>7 plaintiffs yourself?</p> <p>8 A. Yes. I believe I e-mailed Chris and/or</p> <p>9 Andrey with documents.</p> <p>10 Q. What I am getting at is, you didn't</p> <p>11 produce the documents to Moses & Singer first who</p> <p>12 then gave them to plaintiffs; you sent them</p> <p>13 directly to plaintiffs?</p> <p>14 A. Correct.</p> <p>15 Q. Are there any documents that you sent</p> <p>16 Moses & Singer that you didn't send to plaintiffs?</p> <p>17 A. Yes.</p> <p>18 Q. What was the reason for you not</p> <p>19 producing those documents?</p> <p>20 A. Attorney-client privilege.</p> <p>21 Q. With respect to which representation</p> <p>22 were you asserting that attorney-client privilege?</p> <p>23 A. I am not sure I understand --</p> <p>24 MR. ALTMAN: Strike it.</p> <p>25 Q. We are dealing with cases within a case</p>	<p style="text-align: right;">Page 12</p> <p>1 SUSSMAN</p> <p>2 Q. But getting back to my question, so you</p> <p>3 have provided representation to Northern Leasing</p> <p>4 in the Serin versus Northern Leasing matter?</p> <p>5 A. Yes.</p> <p>6 Q. Where is your office located?</p> <p>7 A. 132 West 31st Street, 15th floor.</p> <p>8 Q. That is the same building in which</p> <p>9 Northern Leasing is, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have your own separate office or</p> <p>12 are you in space that is owned or rented or leased</p> <p>13 by Northern Leasing?</p> <p>14 A. We have our own separate office which</p> <p>15 is part of a space that Northern Leasing rents</p> <p>16 from the landlord.</p> <p>17 Q. Do you have a separate entrance into</p> <p>18 your office or do people enter in through a common</p> <p>19 area where they can either go to Northern Leasing</p> <p>20 or to your office?</p> <p>21 A. We have a separate entrance.</p> <p>22 Q. Do you have any equity in Northern</p> <p>23 Leasing?</p> <p>24 A. No.</p> <p>25 Q. When I use the term related entities,</p>

3 (Pages 9 to 12)

<p style="text-align: right;">Page 13</p> <p>1 SUSSMAN</p> <p>2 there are several other companies related to</p> <p>3 Northern Leasing that either share the same</p> <p>4 business, same space or same ownership.</p> <p>5 Do you work for other related entities</p> <p>6 besides Northern Leasing?</p> <p>7 A. I am sorry. When you say related</p> <p>8 entities, again you're referring to Northern</p> <p>9 Leasing related entities?</p> <p>10 Q. Yes. For example, MBF is another</p> <p>11 entity that is associated with Northern Leasing.</p> <p>12 I know there are others.</p> <p>13 Do you do work for these other entities</p> <p>14 besides just Northern Leasing?</p> <p>15 A. Yes.</p> <p>16 Q. Do you do work for any companies that</p> <p>17 are not related to Northern Leasing either through</p> <p>18 sharing space or sharing common ownership or</p> <p>19 common officers?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 A. Yes.</p> <p>22 Q. What percentage of your work is for</p> <p>23 these other non-Northern Leasing related entities?</p> <p>24 A. I would say about 60 percent Northern</p> <p>25 Leasing; 40 percent other. That is rough, a rough</p>	<p style="text-align: right;">Page 15</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: Objection. He is not</p> <p>3 working for Northern Leasing.</p> <p>4 Q. How long have you been provided</p> <p>5 representation in Northern Leasing and related</p> <p>6 entities?</p> <p>7 A. I have been providing legal services to</p> <p>8 Northern Leasing since September or October 2002,</p> <p>9 although I have -- 2003, I was formally retained</p> <p>10 by -- directly by Northern Leasing to provide</p> <p>11 legal services to it.</p> <p>12 Q. Where are you currently licensed?</p> <p>13 A. New York and New Jersey.</p> <p>14 Q. When did you become licensed in New</p> <p>15 York?</p> <p>16 A. December 2002 or -- I forget. I don't</p> <p>17 know if it is December or January 2003.</p> <p>18 Q. When were you licensed in New Jersey?</p> <p>19 A. A year earlier. So I graduated 2001.</p> <p>20 September, I think, of 2001 or -- I forget how it</p> <p>21 works in Jersey.</p> <p>22 MS. NIGRO: Off the record.</p> <p>23 (Discussion off the record.)</p> <p>24 Q. You sat for the July 2001 bar?</p> <p>25 A. Yes, for both.</p>
<p style="text-align: right;">Page 14</p> <p>1 SUSSMAN</p> <p>2 estimate.</p> <p>3 Q. It has to be precise or it is no good.</p> <p>4 A. Sorry then.</p> <p>5 Q. How many attorneys are there in your</p> <p>6 office?</p> <p>7 A. Including myself, three.</p> <p>8 Q. As a general proposition, you handle</p> <p>9 matters for Northern Leasing involved in</p> <p>10 collection and delinquent leases?</p> <p>11 A. Yes.</p> <p>12 Q. Are there any other law firms that</p> <p>13 Northern Leasing and related companies use to do</p> <p>14 the same activity?</p> <p>15 MS. NIGRO: Time frame. Currently?</p> <p>16 MR. ALTMAN: Currently.</p> <p>17 A. Yes, although it goes through our</p> <p>18 office. In other words, we may retain local</p> <p>19 counsel to handle collection work.</p> <p>20 Q. Is there any collection work that does</p> <p>21 not flow through the office?</p> <p>22 A. A very small percentage, but there is</p> <p>23 some.</p> <p>24 Q. How long have you been working for</p> <p>25 Northern Leasing?</p>	<p style="text-align: right;">Page 16</p> <p>1 SUSSMAN</p> <p>2 Q. Have you ever had any disciplinary</p> <p>3 complaints brought against you?</p> <p>4 A. Can you clarify the question?</p> <p>5 I have received complaints forwarded by</p> <p>6 the disciplinary committee that they received and</p> <p>7 forwarded to me for response, but the disciplinary</p> <p>8 committee has never taken any action. They have</p> <p>9 dismissed them before actually filing its own --</p> <p>10 whatever the process might be.</p> <p>11 Q. How many complaints have you received?</p> <p>12 A. I believe three. I think it is three.</p> <p>13 Q. Were they in New York, New Jersey or</p> <p>14 both? How did they break out?</p> <p>15 A. New York.</p> <p>16 Q. When was the first time you received a</p> <p>17 complaint?</p> <p>18 A. I don't remember.</p> <p>19 Q. Approximately.</p> <p>20 A. 2005, 2006.</p> <p>21 Q. When was the last time you received a</p> <p>22 complaint?</p> <p>23 A. I received one recently, in the last</p> <p>24 two months.</p> <p>25 Q. What was the nature of the complaint?</p>

4 (Pages 13 to 16)

<p style="text-align: right;">Page 17</p> <p>1 SUSSMAN</p> <p>2 A. It varied.</p> <p>3 Q. What was the nature of complaint number</p> <p>4 one?</p> <p>5 A. Don't remember the order.</p> <p>6 Q. Pick them whatever order. Describe</p> <p>7 them however you want.</p> <p>8 A. I don't remember precisely. I would</p> <p>9 have to speculate.</p> <p>10 Q. Give me your best recollection.</p> <p>11 A. My best recollection of one of them</p> <p>12 would be that our office was attempting to enforce</p> <p>13 a lease where the lessee thought she or he was not</p> <p>14 responsible for payments under the lease. We had</p> <p>15 initiated litigation on that basis and she was</p> <p>16 essentially asserting her defenses to the</p> <p>17 disciplinary committee to take action for my</p> <p>18 taking legal action on that lease.</p> <p>19 Q. Do you remember the name of the</p> <p>20 complainant?</p> <p>21 A. No.</p> <p>22 Q. The next one.</p> <p>23 A. I don't remember well. I would be</p> <p>24 speculating.</p> <p>25 Q. Do you have any vague recollection?</p>	<p style="text-align: right;">Page 19</p> <p>1 SUSSMAN</p> <p>2 Q. It would be hard for you to find it?</p> <p>3 A. No.</p> <p>4 Q. If we ask counsel and counsel agrees,</p> <p>5 we can locate this information pretty easily?</p> <p>6 A. Yes.</p> <p>7 RQ MR. ALTMAN: We will leave it at that</p> <p>8 then.</p> <p>9 We will be using a universal exhibit</p> <p>10 numbering plan to number these exhibits and</p> <p>11 use the same exhibit numbers through the</p> <p>12 remainder of the depositions. We will start</p> <p>13 with 101 to be clean so we have a clean start.</p> <p>14 I will hand you a couple of things just to get</p> <p>15 started.</p> <p>16 Exhibit 101 is the amended complaint in</p> <p>17 this action Serin versus Northern Leasing.</p> <p>18 (Exhibit 101, amended complaint in this</p> <p>19 action Serin versus Northern Leasing, marked</p> <p>20 for identification, as of this date.)</p> <p>21 MR. ALTMAN: Exhibit 102 is the</p> <p>22 defendants' answer to the amended complaint in</p> <p>23 this case.</p> <p>24 (Exhibit 102, defendants' answer to the</p> <p>25 amended complaint, marked for identification,</p>
<p style="text-align: right;">Page 18</p> <p>1 SUSSMAN</p> <p>2 A. Yes.</p> <p>3 Q. What is the vague recollection?</p> <p>4 A. Similar. Similar to that one --</p> <p>5 another action was where my office had obtained a</p> <p>6 default judgment and we -- our firm was attempting</p> <p>7 to enforce the judgment and I believe we had</p> <p>8 restrained the bank account of the judgment debtor</p> <p>9 and the account holder and judgment debtor filed</p> <p>10 or submitted a complaint to the disciplinary</p> <p>11 committee alleging there was no basis to restrain</p> <p>12 the account.</p> <p>13 Q. The third one.</p> <p>14 A. I don't remember.</p> <p>15 Q. You don't have any vague recollection?</p> <p>16 A. I do, but I would be speculating</p> <p>17 because it is not sharp.</p> <p>18 Q. Tell me your best recollection.</p> <p>19 A. You will have to give me a few moments</p> <p>20 to think.</p> <p>21 Q. Let's not waste time. Do you keep a</p> <p>22 file of these things?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know where this file is?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 SUSSMAN</p> <p>2 as of this date.)</p> <p>3 MR. ALTMAN: I will have questions for</p> <p>4 you later.</p> <p>5 The next thing I will mark is Exhibits</p> <p>6 103 and 104. Exhibit 103 is the subpoena to</p> <p>7 Joseph Sussman in this case.</p> <p>8 (Exhibit 103, subpoena to Joseph</p> <p>9 Sussman, marked for identification, as of this</p> <p>10 date.)</p> <p>11 MR. ALTMAN: Exhibit 104 is the duces</p> <p>12 tecum associated with the subpoena for this</p> <p>13 deposition.</p> <p>14 (Exhibit 104, duces tecum associated</p> <p>15 with subpoena, marked for identification, as</p> <p>16 of this date.)</p> <p>17 Q. First I will ask you this. Exhibit 101</p> <p>18 is the amended complaint in this case. I am not</p> <p>19 going to ask you any substantive questions about</p> <p>20 it. I am just asking, have you ever seen this</p> <p>21 document before?</p> <p>22 A. Yes.</p> <p>23 Q. Are you generally familiar with the</p> <p>24 document?</p> <p>25 A. Yes.</p>

5 (Pages 17 to 20)

<p style="text-align: right;">Page 21</p> <p>1 SUSSMAN</p> <p>2 Q. Exhibit 102 is the answer to the</p> <p>3 amended complaint.</p> <p>4 A. Yes.</p> <p>5 Q. Have you ever seen this document</p> <p>6 before?</p> <p>7 A. I must have.</p> <p>8 Q. As a witness, did you have any</p> <p>9 involvement in providing information that forms</p> <p>10 the basis to -- that forms the basis for the</p> <p>11 answer to the amended complaint?</p> <p>12 A. I don't know.</p> <p>13 Q. Exhibit 103 is the subpoena in this</p> <p>14 case. Have you seen that document before?</p> <p>15 A. Yes.</p> <p>16 Q. Exhibit 104 is the duces tecum in this</p> <p>17 case. Have you seen that before?</p> <p>18 A. Yes.</p> <p>19 Q. What did you do to comply with the</p> <p>20 duces tecum in Exhibit 104?</p> <p>21 A. I gathered documents responsive to the</p> <p>22 duces tecum -- did I say that right? And the</p> <p>23 non-privileged documents were provided to counsel</p> <p>24 for plaintiffs. The privileged documents were</p> <p>25 provided ultimately to the judge for in camera</p>	<p style="text-align: right;">Page 23</p> <p>1 SUSSMAN</p> <p>2 corporate defendant here. So I don't mind if</p> <p>3 you want to take some leeway here, but to the</p> <p>4 extent we are going to talk about any other</p> <p>5 affiliate that is not affiliated with this</p> <p>6 case or named in this case, I am going to</p> <p>7 object.</p> <p>8 MR. ALTMAN: I understand your</p> <p>9 objection. I hear your objection. I don't</p> <p>10 believe it is valid because if there are</p> <p>11 actions in common between the various</p> <p>12 different entities which is really what I am</p> <p>13 asking about, I think I am entitled to explore</p> <p>14 that and there is a RICO claim here and that</p> <p>15 is based on certain activities which may not</p> <p>16 necessarily be limited to just that identified</p> <p>17 in the complaint. There may be other</p> <p>18 activities that we will discover that form the</p> <p>19 basis for the RICO complaint as well.</p> <p>20 MS. NIGRO: If you look at your</p> <p>21 document request, you will realize that</p> <p>22 Northern Leasing was defined as Northern</p> <p>23 Leasing and not any of its affiliates.</p> <p>24 MR. ALTMAN: I didn't ask him to</p> <p>25 provide documents. I am asking a simple</p>
<p style="text-align: right;">Page 22</p> <p>1 SUSSMAN</p> <p>2 inspection as well as counsel, Moses & Singer.</p> <p>3 Q. Was there any part of this duces tecum</p> <p>4 that you didn't comply with for some objection?</p> <p>5 A. Other than the documents I provided?</p> <p>6 Q. Right.</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. You have access to Northern Leasing</p> <p>9 System, correct?</p> <p>10 A. Yes.</p> <p>11 MS. NIGRO: Objection. Clarify.</p> <p>12 When you say their leasing system --</p> <p>13 Q. Northern Leasing has a computer data</p> <p>14 base where they manage information about their</p> <p>15 leases?</p> <p>16 A. Correct.</p> <p>17 Q. Can we use the term Northern</p> <p>18 Leasing-related entities to mean other leasing</p> <p>19 companies that share common space and ownership</p> <p>20 with the principals of Northern Leasing so we</p> <p>21 don't have to repeat all of those qualifications?</p> <p>22 MS. NIGRO: I can go on or off.</p> <p>23 Northern Leasing is described in the</p> <p>24 document request as its own entity without</p> <p>25 other affiliates. It is also the only</p>	<p style="text-align: right;">Page 24</p> <p>1 SUSSMAN</p> <p>2 question about the lease system.</p> <p>3 Q. As I understand it -- just as a</p> <p>4 definitional concept, when I use the term Northern</p> <p>5 Leasing related entities, can we understand that</p> <p>6 to mean other leasing companies sharing the same</p> <p>7 space with common -- some -- common ownership or</p> <p>8 management?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. Okay.</p> <p>11 MS. NIGRO: When you say common --</p> <p>12 common ownership management, I mean MBF --</p> <p>13 MR. ALTMAN: There is Northern Leasing</p> <p>14 and MBF. I don't know what other companies</p> <p>15 there are. I don't want to list or enumerate</p> <p>16 them every time --</p> <p>17 MS. NIGRO: They are not necessarily</p> <p>18 owned and not necessarily affiliated. That is</p> <p>19 my problem.</p> <p>20 MR. ALTMAN: I will ask it differently.</p> <p>21 Q. Northern Leasing's leases are not the</p> <p>22 only leases kept in the leasing system?</p> <p>23 A. Yes.</p> <p>24 Q. MBF are kept in that same system?</p> <p>25 A. Yes.</p>

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 SUSSMAN</p> <p>2 Q. What other companies' leasing leases</p> <p>3 are kept --</p> <p>4 A. There are additional companies kept in</p> <p>5 the system.</p> <p>6 Q. What are the names of those companies?</p> <p>7 A. Lease Finance Group LLC and Golden</p> <p>8 Eagle Leasing LLC and there are a few others,</p> <p>9 although I don't know specifically what the</p> <p>10 relationship is, if it is a separate entity or</p> <p>11 not. Those are the main ones that I am aware of.</p> <p>12 Q. Is the information that is maintained</p> <p>13 for these leases the same for each one of these</p> <p>14 companies?</p> <p>15 A. Yeah, more or less.</p> <p>16 Q. As a routine practice, do you access</p> <p>17 the lease data base in prosecuting Northern</p> <p>18 Leasing or these companies' claims?</p> <p>19 MS. NIGRO: Objection --</p> <p>20 A. Yes.</p> <p>21 MS. NIGRO: You can answer.</p> <p>22 A. Yes.</p> <p>23 Q. Your answer was yes?</p> <p>24 A. Yes.</p> <p>25 Q. Do you follow the same procedures in</p>	<p style="text-align: right;">Page 27</p> <p>1 SUSSMAN</p> <p>2 A. The past two, three years, I would</p> <p>3 estimate between 1500 and 3000 filings in the</p> <p>4 civil court -- in other words, per year.</p> <p>5 Q. 1500 --</p> <p>6 A. That is a rough estimate.</p> <p>7 Q. Before that?</p> <p>8 A. I would say less, but I don't know -- I</p> <p>9 don't know to date.</p> <p>10 Q. What percentage of those end in</p> <p>11 default?</p> <p>12 A. A large percentage.</p> <p>13 Q. What do you mean by a large percentage?</p> <p>14 A. Well, of the cases that precede --</p> <p>15 cases that are not settled or otherwise resolved</p> <p>16 prior to the time period of defendant to answer</p> <p>17 and defendant defaults, I would say a rough</p> <p>18 estimate, 90 percent default -- ends up with</p> <p>19 default judgments.</p> <p>20 It is a rough estimate, so I am</p> <p>21 speculating, but I am trying to respond to your</p> <p>22 question.</p> <p>23 Q. You file cases in any other courts</p> <p>24 besides New York?</p> <p>25 A. Yes, on rare occasion.</p>
<p style="text-align: right;">Page 26</p> <p>1 SUSSMAN</p> <p>2 prosecuting a claim irrespective of which of these</p> <p>3 companies is involved?</p> <p>4 A. Generally, yes.</p> <p>5 Q. When would you do something different?</p> <p>6 A. There are differences in the files</p> <p>7 possibly between a lease that is opened or</p> <p>8 serviced by Northern Leasing versus Lease Finance</p> <p>9 Group. That may affect the way that we prepare a</p> <p>10 file for legal action, but generally yes, it is</p> <p>11 the same procedure.</p> <p>12 Q. On occasion, Northern Leasing may</p> <p>13 service an MBF lease, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And MBF may service a Northern Leasing</p> <p>16 lease, correct?</p> <p>17 A. I am not sure if that is correct.</p> <p>18 Q. How many claims a year do you file on</p> <p>19 behalf of Northern Leasing?</p> <p>20 A. I don't know precisely.</p> <p>21 Q. Do you have an approximation?</p> <p>22 A. Yes.</p> <p>23 Q. What is the approximation and whatever</p> <p>24 time -- give me whatever time scale you can give</p> <p>25 that to me over.</p>	<p style="text-align: right;">Page 28</p> <p>1 SUSSMAN</p> <p>2 Q. Is there any court that has more than</p> <p>3 just a few compared to New York?</p> <p>4 A. No.</p> <p>5 Q. Of the 1500 to 3000 cases, what</p> <p>6 percentage is resolved or dismissed without the</p> <p>7 lessees paying any additional funds?</p> <p>8 A. A small percentage. I wouldn't know</p> <p>9 that number.</p> <p>10 Q. Of the cases where there is not a</p> <p>11 default, what percentage of those cases is</p> <p>12 resolved in the defendant's favor?</p> <p>13 A. Can you clarify -- I think I</p> <p>14 understand, but can you --</p> <p>15 Q. There are basically three classes of</p> <p>16 cases. There are those that once a complaint is</p> <p>17 filed, they get resolved before an answer is</p> <p>18 filed, right?</p> <p>19 A. Correct.</p> <p>20 Q. The second group -- of those that do</p> <p>21 not resolve that way, you said a large majority of</p> <p>22 what is left winds up in default?</p> <p>23 A. Correct.</p> <p>24 Q. Then the third category would be ones</p> <p>25 where the defendant answers and litigates?</p>

7 (Pages 25 to 28)

<p style="text-align: right;">Page 29</p> <p>1 SUSSMAN</p> <p>2 A. Correct.</p> <p>3 Q. Of the ones that are actually</p> <p>4 litigated, what percentage of those are resolved</p> <p>5 in -- either way, either the defendant's favor or</p> <p>6 in NLS's favor?</p> <p>7 A. I understand your question, but I don't</p> <p>8 know the numbers, but there is a -- there are a</p> <p>9 number of cases that are resolved -- I would say</p> <p>10 the majority are resolved in favor of the</p> <p>11 plaintiff. There are a number of cases that are</p> <p>12 resolved in favor of the defendant, but I don't</p> <p>13 know the numbers of percentages offhand.</p> <p>14 Q. Do you track the resolution of each of</p> <p>15 the cases in some kind of data base or some</p> <p>16 spreadsheet or something of that nature?</p> <p>17 A. Yes.</p> <p>18 Q. Does it track, for example, whether it</p> <p>19 was resolved or whether it was default or whether</p> <p>20 it was --</p> <p>21 A. Not that way.</p> <p>22 Q. How does it track?</p> <p>23 A. My office utilizes, like we had</p> <p>24 discussed earlier, the Northern Leasing's case --</p> <p>25 their collection and customer service software.</p> <p style="text-align: right;">Page 30</p>	<p style="text-align: right;">Page 31</p> <p>1 SUSSMAN</p> <p>2 Q. Is there a specific screen that you go</p> <p>3 to for tracking the litigation status of these</p> <p>4 cases?</p> <p>5 A. Yes.</p> <p>6 Q. What is that called?</p> <p>7 A. The post write-off screen. That is a</p> <p>8 general description of what I refer to it as.</p> <p>9 Q. You're familiar with NLS's business</p> <p>10 model, correct?</p> <p>11 A. Yes.</p> <p>12 MS. NIGRO: Objection.</p> <p>13 You can answer.</p> <p>14 Q. You're familiar that purportedly</p> <p>15 independent organizations go out and get merchants</p> <p>16 to obtain credit card processing services and</p> <p>17 equipment and then contacts Northern Leasing to</p> <p>18 fund the leasing of that equipment, correct?</p> <p>19 MS. NIGRO: Objection.</p> <p>20 You may answer.</p> <p>21 A. Yes.</p> <p>22 Q. And that once the equipment is actually</p> <p>23 purchased by Northern Leasing from the vendor,</p> <p>24 correct?</p> <p>25 A. Sorry.</p>
<p style="text-align: right;">Page 30</p> <p>1 SUSSMAN</p> <p>2 We -- I mean my office, we utilize that software</p> <p>3 to -- as a litigation management tool so that we</p> <p>4 have full access to Northern Leasing's file and</p> <p>5 then we can program and put into it the litigation</p> <p>6 information so that we are sharing information</p> <p>7 about that. So that information is available.</p> <p>8 Is it neatly tailored so that you can</p> <p>9 say what percentage default; what percentage</p> <p>10 answer? Not that way. That is what I meant, but</p> <p>11 information is discernable. It is obtainable.</p> <p>12 Q. Could you run a report of all the</p> <p>13 cases, you know, filed within a range of dates and</p> <p>14 see the case number, a lease number and the</p> <p>15 resolution?</p> <p>16 A. Not exactly, but when effort can be</p> <p>17 made to obtain information, it wouldn't be as neat</p> <p>18 as I or you would like. That is what I am trying</p> <p>19 to say.</p> <p>20 Q. Do you have free access to the Northern</p> <p>21 Leasing Systems? Are you able to go and see all</p> <p>22 the screens and go everywhere within the system?</p> <p>23 A. I believe so. There may be some areas</p> <p>24 that I don't have access to, but for my purposes,</p> <p>25 it is adequate. It is pretty all encompassing.</p>	<p style="text-align: right;">Page 32</p> <p>1 SUSSMAN</p> <p>2 Q. The equipment that is delivered to the</p> <p>3 merchant is purchased by Northern Leasing from the</p> <p>4 vendor and then leased to the lessee, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And that Northern Leasing pays the</p> <p>7 merchant a certain amount of money, correct?</p> <p>8 A. Correct -- excuse me. That is not</p> <p>9 correct. Northern Leasing pays the vendor.</p> <p>10 Q. Yes.</p> <p>11 The amount of money the vendor gets</p> <p>12 paid for a given lease is dependent on the credit</p> <p>13 rating of the merchant -- of the personal</p> <p>14 guarantor, correct?</p> <p>15 MS. NIGRO: Objection.</p> <p>16 A. From what I understand, it is a</p> <p>17 relevant factor, but it is only one factor.</p> <p>18 Q. Do you have a detailed understanding of</p> <p>19 the factors how -- what a vendor is paid is</p> <p>20 determined?</p> <p>21 A. I would say no.</p> <p>22 Q. Who would be the person at Northern</p> <p>23 Leasing to discuss that with?</p> <p>24 A. Sara Krieger would have an</p> <p>25 understanding about that.</p>

8 (Pages 29 to 32)

<p style="text-align: right;">Page 33</p> <p>1 SUSSMAN</p> <p>2 Q. On occasion, when there is dispute over</p> <p>3 a lease, does Northern Leasing contact one of the</p> <p>4 ISO's and ask for its money back from the ISO?</p> <p>5 A. I understand your question, but I would</p> <p>6 like to answer it in a little more -- if I can</p> <p>7 rephrase it because -- what do you mean by</p> <p>8 dispute?</p> <p>9 Q. If a merchant calls up and complains to</p> <p>10 Northern Leasing that there is something wrong</p> <p>11 with the leasing or how it was done, does Northern</p> <p>12 Leasing sometimes go back to the ISO and say, we</p> <p>13 paid you this money; you need to return that money</p> <p>14 to us because there is something wrong with this</p> <p>15 transaction?</p> <p>16 A. Yes.</p> <p>17 Q. Does Northern Leasing ever get the</p> <p>18 money back from any of the ISO's?</p> <p>19 A. Yes.</p> <p>20 Q. When you get the money back from the</p> <p>21 ISO's, is that reflected in any continuing dispute</p> <p>22 with the customers?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 You can answer.</p> <p>25 A. I don't understand the question.</p> <p style="text-align: right;">Page 34</p>	<p style="text-align: right;">Page 35</p> <p>1 SUSSMAN</p> <p>2 MR. ALTMAN: I understand.</p> <p>3 Q. If there had been litigation started,</p> <p>4 you would discontinue any actions at that point?</p> <p>5 A. Generally, yes, but it would -- it</p> <p>6 would depend on the posture of litigation and</p> <p>7 certainly the issues involved in the litigation,</p> <p>8 but that would be the way to go, clearly.</p> <p>9 Q. If the merchant had paid moneys in over</p> <p>10 a period of time, do you refund those moneys to</p> <p>11 the merchant when the lease gets canceled because</p> <p>12 you got the money from ISO?</p> <p>13 MS. NIGRO: By "you" you mean Northern</p> <p>14 Leasing?</p> <p>15 MR. ALTMAN: Yes.</p> <p>16 A. From what I understand, it depends on</p> <p>17 the nature of the dispute or the meritorious</p> <p>18 defense asserted by the merchant in connection</p> <p>19 with the lease.</p> <p>20 MR. ALTMAN: We will mark the next</p> <p>21 exhibit as 105 which is the supplemental rule</p> <p>22 26 disclosures, Northern Leasing, et al.,</p> <p>23 dated 5th of October, 2010.</p> <p>24 (Exhibit 105, supplemental rule 26</p> <p>25 disclosures, Northern Leasing, et al., dated</p> <p style="text-align: right;">Page 36</p>
<p>1 SUSSMAN</p> <p>2 Q. Let's say the customer signs a 48-month</p> <p>3 lease for \$50 a month and three months into the</p> <p>4 lease, there is a problem, and let's say Northern</p> <p>5 Leasing paid \$1600 to the vendor for that piece of</p> <p>6 equipment and the dispute arises, and Northern</p> <p>7 Leasing goes back to the ISO and says, you have to</p> <p>8 pay us back that \$1600 and the ISO pays back the</p> <p>9 \$1600.</p> <p>10 If there is still a continuing dispute</p> <p>11 with the merchant, does Northern Leasing still</p> <p>12 continue to try to collect on that lease --</p> <p>13 A. No.</p> <p>14 MS. NIGRO: Objection.</p> <p>15 You can answer.</p> <p>16 A. No.</p> <p>17 Q. If the ISO returns the money, do you</p> <p>18 then cancel the lease at that point?</p> <p>19 A. Yes.</p> <p>20 Q. Is that the universal policy?</p> <p>21 A. I believe so.</p> <p>22 MS. NIGRO: When you say you cancel the</p> <p>23 lease, do you mean Northern Leasing?</p> <p>24 MR. ALTMAN: Yes.</p> <p>25 MS. NIGRO: Because he is --</p>	<p>1 SUSSMAN</p> <p>2 5th of October, 2010, marked for</p> <p>3 identification, as of this date.)</p> <p>4 Q. Have you ever seen this document</p> <p>5 before?</p> <p>6 A. I don't believe so.</p> <p>7 Q. If you go to page 5 of the document,</p> <p>8 number 12, Joseph Sussman is listed on this</p> <p>9 document?</p> <p>10 A. Yes.</p> <p>11 Q. That is you?</p> <p>12 A. Yes.</p> <p>13 Q. Are you aware that you had been listed</p> <p>14 on the rule 26 disclosure?</p> <p>15 A. I was aware that defendants or Northern</p> <p>16 Leasing would be seeking to present me as a</p> <p>17 witness; is that correct? I am not too familiar</p> <p>18 with federal procedure.</p> <p>19 MR. ALTMAN: We will mark as Exhibit</p> <p>20 106, although it was printed out on October 7,</p> <p>21 it is an e-mail dated October 5 from Robert</p> <p>22 Lillienstein to Christian Chittur and others</p> <p>23 in this case.</p> <p>24 (Exhibit 106, e-mail dated October 5,</p> <p>25 marked for identification, as of this date.)</p>

9 (Pages 33 to 36)

<p style="text-align: right;">Page 37</p> <p>1 SUSSMAN</p> <p>2 Q. You will see here that Mr. Lillienstein</p> <p>3 identified individuals that the defendants</p> <p>4 intended to call in at the trial identified in</p> <p>5 numbers 1 through 12 of the rule 26 disclosure?</p> <p>6 A. Yes.</p> <p>7 Q. You're number 12?</p> <p>8 A. Correct.</p> <p>9 Q. According to this, it is the intention</p> <p>10 of Northern Leasing to call you as a witness</p> <p>11 during the trial, correct?</p> <p>12 MS. NIGRO: Objection.</p> <p>13 You can answer.</p> <p>14 A. Correct.</p> <p>15 Q. Going back to Exhibit 105, number 12</p> <p>16 where you're listed, there is a description of the</p> <p>17 knowledge that you purportedly possess. I will</p> <p>18 give you an opportunity to read that and ask you</p> <p>19 if you disagree with anything written there.</p> <p>20 A. I agree with that. I agree with the</p> <p>21 description.</p> <p>22 Q. The first item is NLS's involvement in</p> <p>23 the collection actions involved in this case,</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 39</p> <p>1 SUSSMAN</p> <p>2 THE VIDEOGRAPHER: The time is now</p> <p>3 11:08 a.m. We are back on the record.</p> <p>4 Q. Mr. Sussman, can you tell me in bullet</p> <p>5 points the general knowledge you have about the</p> <p>6 underlying collection actions?</p> <p>7 I will ask it differently.</p> <p>8 Can you just describe to me generally</p> <p>9 the knowledge you have? We don't have to get into</p> <p>10 the detail of knowledge right now.</p> <p>11 A. I had a knowledge at the time that the</p> <p>12 Serin action was filed, I familiarized myself, I</p> <p>13 am sure, with some of the details of the -- I will</p> <p>14 back up. I have a general knowledge of the</p> <p>15 individual collection actions that this action is</p> <p>16 about.</p> <p>17 Certainly, I would have been familiar</p> <p>18 with it prior, if I was the attorney of record, in</p> <p>19 initiating it and making a review and would have</p> <p>20 re-familiarized myself when the Serin action was</p> <p>21 filed or possibly prior to that, but the answer is</p> <p>22 yes, I have a -- am familiar with some of the</p> <p>23 details.</p> <p>24 Q. I believe you testified earlier that</p> <p>25 you would have reviewed the information in the</p>
<p style="text-align: right;">Page 38</p> <p>1 SUSSMAN</p> <p>2 Q. The second thing is the -- the</p> <p>3 collection actions involved in this case would be</p> <p>4 the collection actions against the individual</p> <p>5 plaintiffs in this case, correct?</p> <p>6 A. You mean that is what is intended in</p> <p>7 that sentence? Yes, I believe so.</p> <p>8 Q. The procedures followed by NLS</p> <p>9 regarding collections, correct?</p> <p>10 A. Correct.</p> <p>11 Q. The procedures followed by NLS in cases</p> <p>12 involving claims of forgery, correct?</p> <p>13 A. Correct.</p> <p>14 MS. NIGRO: For the record, the</p> <p>15 beginning of that sentence is that Mr. Sussman</p> <p>16 is likely to have knowledge. It doesn't mean</p> <p>17 he has all encompassing --</p> <p>18 MR. ALTMAN: I understand.</p> <p>19 Q. If I am going to ask you questions and</p> <p>20 we will see whether we have an issue right here --</p> <p>21 THE WITNESS: Can I take a break?</p> <p>22 MR. ALTMAN: Yes.</p> <p>23 THE VIDEOGRAPHER: The time is now</p> <p>24 10:54 a.m. We are off the record.</p> <p>25 (Recess taken.)</p>	<p style="text-align: right;">Page 40</p> <p>1 SUSSMAN</p> <p>2 leasing system as part of your prosecution of the</p> <p>3 claim on behalf of NLS, correct?</p> <p>4 MS. NIGRO: Objection.</p> <p>5 You can answer.</p> <p>6 A. Yes. Just to clarify, the way that I</p> <p>7 reviewed a lease file in making a determination as</p> <p>8 to whether to take the case and take legal action</p> <p>9 evolved and initially it may have been a hard copy</p> <p>10 file when Northern Leasing started moving towards</p> <p>11 scanning, imaging their documents, we started -- I</p> <p>12 mean me and my staff, were more dependent on the</p> <p>13 system.</p> <p>14 Initially, it was more hard copy</p> <p>15 documents, files that were provided to us and then</p> <p>16 we started to move on to the system. Then we just</p> <p>17 made our review straight out of the system. That</p> <p>18 is where all the information was.</p> <p>19 Did I answer your question?</p> <p>20 Q. Yes, I think you did.</p> <p>21 What kind of information were you</p> <p>22 provided when you were provided the hard copy</p> <p>23 information?</p> <p>24 A. It is the same information that is</p> <p>25 maintained in CCS, but from what I understand over</p>

10 (Pages 37 to 40)

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1 SUSSMAN
2 the years I familiarized myself with the documents
3 that are maintained, there are certain standard
4 documents that the company will require before
5 funding, entering into an agreement which would be
6 obviously the lease agreement, chat --
7 verification, processing applications, delivery
8 and acceptance receipt and any correspondence
9 related to the lease that came in to the company
10 or sent out would be in that file.

11 Q. What about activity logs; would that be
12 in the file?

13 A. The act -- no.

14 MS. NIGRO: Objection.

15 Go ahead.

16 A. I don't believe they were printed -- I
17 don't believe so.

18 Are you referring to the comment log?

19 Q. Yes.

20 A. I don't believe they were in those hard
21 copy files, if I remember correctly, although they
22 could have been. I don't think so.

23 Q. When did you begin to have direct
24 access on to the leasing system?

25 A. I don't remember exactly.

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1 SUSSMAN

2 Q. Approximately.

3 A. 2003.

4 Q. Essentially for the whole time that you
5 have been at NLS --

6 MS. NIGRO: Objection.

7 Representing.

8 Q. -- representing NLS, you have been
9 working with direct access into the leasing
10 system, correct?

11 A. Yes. There was -- I know that
12 initially, I did not have access -- correct. For
13 certainly the majority -- most of the time.

14 Q. Who besides you would review
15 information associated with a lease in deciding
16 what further actions to take?

17 A. Can you clarify what you mean by
18 deciding what action to take? What action are you
19 referring to?

20 Q. Before deciding to file a lawsuit, you
21 reviewed the leasing information, correct?

22 A. Correct.

23 Q. Who besides you would review that
24 leasing information?

25 A. That also is something that evolved.

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1 SUSSMAN

2 So that when I first became acquainted
3 with Northern Leasing, I was actually working for
4 another attorney who was providing collection
5 services for Northern Leasing. So he employed me
6 on a part time basis to help him review files and
7 handle work that he was doing. This is early --
8 late 2002 when I first started doing this work.

9 Then I was working alone and with him.
10 We -- I and him would review the files and we
11 would communicate with one or two individuals in
12 Northern Leasing's collection department about
13 files.

14 Eventually, I took on more
15 responsibility and began to do more collection
16 work for Northern Leasing. I would do it myself
17 and communicate with those individuals.
18 Eventually the workload increased and I hired
19 people. I hired staff. Then it would be me and
20 my staff or sometimes my staff, depending on the
21 amount of accounts coming in.

22 So the answer is myself and then
23 eventually myself and my staff, my office --
24 sorry. I didn't answer your question.

25 Q. No, you did to some degree.

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1 SUSSMAN

2 You said there were two individuals in
3 collections that you communicated. Who were those
4 individuals?

5 A. It is probably three.

6 From what I remember, there was a woman
7 named Mitzy Rios. She was the first point person
8 that I was introduced to when I started to do this
9 work. She is no longer with the company. I
10 forget when she left.

11 Ricky Brown, Ricardo Brown is his
12 formal name. He runs the collections department
13 called the legal collections department and Sara
14 Krieger at that time.

15 Now, there are other individuals,
16 Robert Taylor, who also -- a manager in the
17 collections department, so our office would
18 communicate with him.

19 Q. Still communicate with Sara Krieger?

20 A. Yes -- yes, but not as much as I did
21 initially back when I first started.

22 Q. Since you have been directly working
23 with NLS in 2003, do all of the legal complaints
24 filed in New York City go out with your name as
25 the attorney?

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 SUSSMAN</p> <p>2 A. Since when?</p> <p>3 Q. 2003.</p> <p>4 A. I believe so, yes.</p> <p>5 Q. You signed the affirmations that go</p> <p>6 along with those legal complaints?</p> <p>7 A. Do you mean the verifications?</p> <p>8 Q. Yes.</p> <p>9 A. Well, the client signs the servers.</p> <p>10 Q. But there is also sometimes an</p> <p>11 affirmation on the part of --</p> <p>12 A. In a default -- in subsequent</p> <p>13 proceedings, yes. Some affirmation is signed by</p> <p>14 myself or other attorneys in my office.</p> <p>15 Q. So other attorneys might sign the same?</p> <p>16 A. Yes.</p> <p>17 Q. When you review a file, you review the</p> <p>18 leasing information, do you have a form that you</p> <p>19 fill out or take notes on that or how do you</p> <p>20 assimilate all of that information?</p> <p>21 A. We don't have a file or checklist.</p> <p>22 In other words -- you want me to</p> <p>23 describe the process. It is a system now.</p> <p>24 Once upon a time, it was a stack of</p> <p>25 files, open up the file, look through it, little</p>	<p style="text-align: right;">Page 47</p> <p>1 SUSSMAN</p> <p>2 kick it out of that status and what is okay stays</p> <p>3 in the status.</p> <p>4 What gets kicked out, it gets kicked</p> <p>5 out for me to review and make a decision whether</p> <p>6 it is appropriate or not for suit. That is the</p> <p>7 process that -- that process has evolved since I</p> <p>8 started.</p> <p>9 Q. Is that process written at all?</p> <p>10 A. I believe that -- I recall an e-mail at</p> <p>11 one point where we might have communicated some</p> <p>12 information about this, but I don't know for sure.</p> <p>13 I am speculating.</p> <p>14 Q. Do you know where that e-mail exists</p> <p>15 today?</p> <p>16 A. If there was an e-mail, it would exist</p> <p>17 somewhere on my hard drives somewhere.</p> <p>18 Q. Does your firm have a records retention</p> <p>19 policy?</p> <p>20 A. Not a formal one.</p> <p>21 Q. Do you have an informal records</p> <p>22 retention policy?</p> <p>23 A. We basically retain everything.</p> <p>24 Q. Does your firm use e-mail?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 46</p> <p>1 SUSSMAN</p> <p>2 post-its and I would put a comment in and either</p> <p>3 sign off, you know, or say we are going to sign</p> <p>4 off on these; we will take these accounts or not,</p> <p>5 and describe the reasons why we would or would</p> <p>6 not.</p> <p>7 Eventually, as I said, the company</p> <p>8 migrated, but they started to go towards the</p> <p>9 system, relying on imaging documents. So my</p> <p>10 office started to utilize that system for</p> <p>11 information.</p> <p>12 We had set up -- we worked together to</p> <p>13 set up a process, so we could work efficiently so</p> <p>14 that lease that were -- charged off leases that</p> <p>15 the company was seeking to push to us to take</p> <p>16 legal action were put into a status and then they</p> <p>17 would send e-mails or call or, guys, ready for the</p> <p>18 new batch that we would like you to review and see</p> <p>19 if you can take legal action. Then I and my staff</p> <p>20 divide it up. We have parameters which I have</p> <p>21 educated them to look for.</p> <p>22 Basically, if in reviewing CCS, the</p> <p>23 documents and the notes, if there are certain</p> <p>24 issues, they flag it and put it aside. If it is</p> <p>25 okay, then they will -- but they will actually</p>	<p style="text-align: right;">Page 48</p> <p>1 SUSSMAN</p> <p>2 Q. Is it the same e-mail as Northern</p> <p>3 Leasing, MBF?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have your own servers?</p> <p>6 A. I don't know. I don't know -- we have</p> <p>7 our own e-mail system and an account. It has</p> <p>8 nothing to do with Northern Leasing, but since we</p> <p>9 are using space that is owned by Northern Leasing,</p> <p>10 there might be some connection, but I am not</p> <p>11 familiar with the technicalities of that.</p> <p>12 Q. The computers that your firm uses, did</p> <p>13 your firm purchase them or did NLS?</p> <p>14 A. Some are mine. Some are theirs.</p> <p>15 Q. When you have a technical problem, who</p> <p>16 do you call?</p> <p>17 A. Depends on the day.</p> <p>18 Q. Who do you call and --</p> <p>19 A. At times we were reliant on Northern</p> <p>20 Leasing's IT department to help us out. At times</p> <p>21 we went our own way.</p> <p>22 Q. Don't tell Steve --</p> <p>23 A. Steve is great.</p> <p>24 Q. When you need software, do you purchase</p> <p>25 software yourself or does NLS get it for you?</p>

12 (Pages 45 to 48)

<p style="text-align: right;">Page 49</p> <p>1 SUSSMAN</p> <p>2 A. We purchase it ourselves.</p> <p>3 Q. Aside from the matters that are</p> <p>4 collection matters that you do for the NLS and</p> <p>5 related companies, what other kind of work do you</p> <p>6 do for NLS and related companies?</p> <p>7 A. The brunt of it is collection related</p> <p>8 work.</p> <p>9 For example, something other than that</p> <p>10 would be this Serin litigation. When it was</p> <p>11 filed, I was probably the first person to digest</p> <p>12 information and recommend what it was worth. I</p> <p>13 mean, I don't know that I was the person that they</p> <p>14 were looking to tell them what to do, but I</p> <p>15 offered my two cents as any lawyer would. That</p> <p>16 kind of thing is something that I provide. Those</p> <p>17 are the kinds of services that I provide to</p> <p>18 Northern.</p> <p>19 Q. What kind of work do you do for firms</p> <p>20 that are not, I think you said 40 percent that are</p> <p>21 not NLS related?</p> <p>22 A. Mostly collection work. I am a</p> <p>23 collection guy; commercial collections and retail</p> <p>24 also; lenders, some other leasing companies, some</p> <p>25 furniture company, a nursing home, a hodge podge</p>	<p style="text-align: right;">Page 51</p> <p>1 SUSSMAN</p> <p>2 Q. Yes. Whatever it is that logs</p> <p>3 activities, do you make entries into that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you review that activity log as part</p> <p>6 of your prosecution of a claim?</p> <p>7 A. Yes, I and my staff, sure.</p> <p>8 Q. You said you're now three attorneys?</p> <p>9 A. Yes.</p> <p>10 Q. How long were you just one?</p> <p>11 A. I don't -- I should know. I should</p> <p>12 know this answer off the top of my head. Maybe</p> <p>13 '05, '04.</p> <p>14 Q. At the time the Serin lawsuit was</p> <p>15 filed, did you have more than one lawyer?</p> <p>16 A. When was this filed?</p> <p>17 MS. NIGRO: 2006.</p> <p>18 Q. I thought that might refresh your</p> <p>19 recollection.</p> <p>20 A. I don't remember.</p> <p>21 Q. It says here that you also have</p> <p>22 knowledge of the procedures followed by NLS</p> <p>23 regarding collections.</p> <p>24 MS. NIGRO: You're referring to Exhibit</p> <p>25 105?</p>
<p style="text-align: right;">Page 50</p> <p>1 SUSSMAN</p> <p>2 of other clients.</p> <p>3 Q. For any other clients, do you have</p> <p>4 direct access to their leasing data bases?</p> <p>5 A. At one point I had access to another</p> <p>6 client's -- it wasn't as sophisticated, but I had</p> <p>7 access to some of their information. So the</p> <p>8 answer is yes.</p> <p>9 Q. Today, is that true?</p> <p>10 A. I don't do work for them unfortunately.</p> <p>11 Q. For any other client today, do you have</p> <p>12 access to their systems?</p> <p>13 A. Sorry. Yes, we do.</p> <p>14 Q. When you access the NLS system, are you</p> <p>15 able to make entries?</p> <p>16 A. Yes.</p> <p>17 Q. Do you make entries?</p> <p>18 A. Yes.</p> <p>19 Q. The activity log, do you make entries</p> <p>20 in the activity log?</p> <p>21 MS. NIGRO: Objection.</p> <p>22 What activity log?</p> <p>23 MR. ALTMAN: He used that term.</p> <p>24 A. Call, result, comment log. That is</p> <p>25 what he is referring to.</p>	<p style="text-align: right;">Page 52</p> <p>1 SUSSMAN</p> <p>2 Q. It says you have knowledge of the</p> <p>3 procedures followed by NLS regarding collections.</p> <p>4 Does that knowledge include what NLS</p> <p>5 does before you get the file?</p> <p>6 A. My knowledge, like it says, is -- I am</p> <p>7 likely to have some -- I have some knowledge about</p> <p>8 that. Although I like to think I know everything,</p> <p>9 I don't.</p> <p>10 The answer is I know much about -- over</p> <p>11 the years, I have learned much about the client's</p> <p>12 work, as I should if I am going to review a file</p> <p>13 and decide whether to enforce a lease, but it is</p> <p>14 not -- I always learn something every day.</p> <p>15 Q. It says, the procedures followed by NLS</p> <p>16 in cases involving claims of forgery.</p> <p>17 Do you have knowledge of what NLS does</p> <p>18 before the file goes to you or only after?</p> <p>19 A. Same answer. I have knowledge about</p> <p>20 it.</p> <p>21 Q. What is the procedure followed by NLS</p> <p>22 in cases involving claims of forgery?</p> <p>23 A. Again, my understanding, like</p> <p>24 everything, it depends. It depends on this and</p> <p>25 that, but it depends on the particulars of the</p>

13 (Pages 49 to 52)

<p style="text-align: right;">Page 53</p> <p>1 SUSSMAN</p> <p>2 claim and there is a variety of factors from what</p> <p>3 I understand the company has to evaluate; whether</p> <p>4 this is a convenient response to a collection call</p> <p>5 because -- I don't know if any of you work in</p> <p>6 collections, it is the most convenient thing to</p> <p>7 say, if someone is calling you for money, I am not</p> <p>8 responsible. Well, you signed a lease agreement.</p> <p>9 Well, I didn't sign the lease agreement. What do</p> <p>10 you do then? Well, what would you do then?</p> <p>11 So the company, I believe, also has</p> <p>12 evolved, but to the extent that it is -- for</p> <p>13 example, was this something that was raised early</p> <p>14 on in the lease. To the extent that there is</p> <p>15 documentation to support such a claim, what kind</p> <p>16 of performance under the lease.</p> <p>17 Those are just a number of the factors</p> <p>18 that I think an individual who is fielding or</p> <p>19 receiving this claim has to evaluate whether to</p> <p>20 take it further and -- take it seriously enough to</p> <p>21 proceed -- to look into it further or just to say,</p> <p>22 well, call again the next day and say, well, maybe</p> <p>23 this repeats itself.</p> <p>24 So -- but eventually or if the</p> <p>25 information or the factors are present, then there</p>	<p style="text-align: right;">Page 55</p> <p>1 SUSSMAN</p> <p>2 Q. Who at risk management is responsible</p> <p>3 for reviewing these forgery claims?</p> <p>4 A. There are a number of individuals that</p> <p>5 I have -- that I am aware of over the years.</p> <p>6 Q. Can you think of some of the names?</p> <p>7 A. Yeah. Jenilee Joseph or Josephs. At</p> <p>8 one point, John Paul Mauge, M A U G E, and others</p> <p>9 I don't remember.</p> <p>10 Q. Do these people have any particular</p> <p>11 training?</p> <p>12 A. Do you want to clarify what you mean by</p> <p>13 training?</p> <p>14 Q. What makes these people qualified to</p> <p>15 review claims of forgery?</p> <p>16 MS. NIGRO: Objection.</p> <p>17 You can answer.</p> <p>18 A. Well, again, Northern Leasing doesn't</p> <p>19 consider itself a handwriting expert or in the</p> <p>20 business of -- you know, as a handwriting expert</p> <p>21 would be offering an opinion about it, but they,</p> <p>22 over years, have whatever knowledge and</p> <p>23 understanding of the business, the way it</p> <p>24 operates, would presumably train an individual in</p> <p>25 this area to -- with the appropriate factors,</p>
<p style="text-align: right;">Page 54</p> <p>1 SUSSMAN</p> <p>2 is a process where probably a supervisor would</p> <p>3 have to make this decision. I wouldn't imagine an</p> <p>4 individual collector can just decide to do this,</p> <p>5 but an affidavit consistent with FTC's</p> <p>6 recommendation for identity theft victim; to sign</p> <p>7 an affidavit setting forth the basis of the claim,</p> <p>8 talking about forgery here, provide signature</p> <p>9 specimens in the form of government issued ID,</p> <p>10 file a police report, et cetera. That information</p> <p>11 event is provided to Northern Leasing who then has</p> <p>12 to review it and decide what to do.</p> <p>13 That is a very general overview of my</p> <p>14 understanding of how this works.</p> <p>15 Q. Who at Northern Leasing reviews the</p> <p>16 information once it has been received?</p> <p>17 A. I don't know the answer exactly, but</p> <p>18 the way I understand it is that maybe a supervisor</p> <p>19 in the collections department would provide that</p> <p>20 information and he or she would review it.</p> <p>21 If the information is there, the file</p> <p>22 is complete, it eventually gets referred to the</p> <p>23 risk management department who would review it and</p> <p>24 they would make the decision whether to -- now,</p> <p>25 again -- okay. That is the answer.</p>	<p style="text-align: right;">Page 56</p> <p>1 SUSSMAN</p> <p>2 basic information to make as best decisions it</p> <p>3 could make.</p> <p>4 The answer is, I don't think they hire</p> <p>5 somebody with a degree from Harvard in handwriting</p> <p>6 analysis, et cetera, but I think they are trained</p> <p>7 on the job for this purpose.</p> <p>8 Q. In making a decision whether to</p> <p>9 prosecute a case, you rely upon the opinion of</p> <p>10 these people in risk management, correct?</p> <p>11 A. Not correct.</p> <p>12 Q. How does it go from the opinion of the</p> <p>13 person in risk management to ultimately decide</p> <p>14 whether to prosecute a claim?</p> <p>15 A. As I said, my job is -- I am an</p> <p>16 attorney retained by the company to assist in</p> <p>17 collections, take legal action when necessary and</p> <p>18 appropriate in an effort to make a recovery on a</p> <p>19 loss, but as an attorney, it is my duty to have a</p> <p>20 good -- make a review and understand that there is</p> <p>21 a good faith basis for asserting a claim.</p> <p>22 To the extent that this procedure is</p> <p>23 present in the file, I have my own duty -- if I am</p> <p>24 going to sign off a piece of paper that says you</p> <p>25 owe the company money, I have my own duty to make</p>

14 (Pages 53 to 56)

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1 SUSSMAN
2 my own determination.
3 I certainly would be interested to see
4 what they have to say and I make my own decision
5 about whether A, I can say that is ridiculous; we
6 can sue on that or it is risky or we don't know,
7 let's not -- a variety of different issues, but I
8 can make my own independent decision.
9 Q. You're not a handwriting expert,
10 correct?
11 A. Correct.
12 Q. Do you ever retain a handwriting expert
13 prior to prosecuting a claim?
14 A. No -- I don't remember ever doing it in
15 that context. I think we have retained -- when I
16 say we, me, my office in certain situations, but I
17 don't believe it was prior to deciding whether to
18 proceed with a claim. I don't recall that.
19 Q. What are the factors that you use in
20 assessing whether to proceed with a case where
21 there is a claim of forgery?
22 A. Do you mean what are my factors in
23 determining whether to proceed in a case where a
24 forgery claim has been asserted?
25 Q. Correct. I will make sure I

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1 SUSSMAN
2 understand.
3 I think you testified a few moments ago
4 that before you actually proceed, that you as an
5 attorney have an obligation to insure the claim is
6 meritorious. Therefore, you make your own
7 independent assessment of the forgery claim in
8 deciding how to proceed, correct?
9 A. Correct.
10 Q. How do you go about doing that?
11 One thing we know you don't do is
12 generally hire a handwriting expert, so you use
13 other factors?
14 A. Yes. Again, I don't expect that my
15 decision is the truth. What I mean is, I don't
16 claim to know by my review whether this is what
17 happened or not what happened. I am making a
18 decision about whether I have a good faith basis
19 for asserting a claim on behalf of the client.
20 That is the way I view my responsibility.
21 Along with that, there are a variety of
22 different factors. As attorneys would know, you
23 have to make a decision; is it appropriate; does
24 it make sense. There is a benefit analysis, et
25 cetera.

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1 SUSSMAN
2 To the extent that a claim has been
3 asserted and it has reached a point where the
4 company is saying -- is still pushing the account
5 that they feel it is entitled to recover on this
6 and they want me to take legal action as their
7 attorney; testifying. Everything goes into
8 consideration, any piece of information.
9 I -- I don't know that it is the case,
10 but I could certainly see a case where a lessee --
11 a guarantor is asserting he didn't sign the lease
12 and the company received the information and the
13 lease was filed and some people in the company
14 thought that maybe this is valid; some didn't.
15 I could foresee a situation like that
16 and then it comes to me and I can decide, what do
17 I recommend? What do I see here? I will make
18 that decision.
19 We have a good faith basis for
20 asserting it. We are going to court. It is the
21 court that decides. We are not the arbiters of
22 facts. We are seeking the assistance of the court
23 in doing that.
24 For the most part, it is my practice
25 not to take action where there has been a claim

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1 SUSSMAN
2 that surfaced and looks like it has been
3 substantiated to some degree. I feel it is not
4 appropriate and so, I mean, there are many factors
5 that would go into it.
6 Q. I don't think you exactly answered my
7 question, but we will come back to it. We will
8 fix that.
9 Have there ever been files where the
10 companies wanted to push the claim where they
11 believe it is not a forgery and in your review,
12 you think it is a forgery and decided not to
13 proceed?
14 A. Yes.
15 Q. Has it gone the other way around?
16 A. Yes.
17 Q. If you believed that it was, in fact, a
18 forgery, you would not proceed with the case,
19 correct?
20 A. Correct.
21 Q. If the company believes it has
22 information and hands it off to you, what I want
23 to know is, what are the factors in trying to
24 determine whether this is a forgery, not the whole
25 overall of whether to proceed, just in terms of

15 (Pages 57 to 60)

<p style="text-align: right;">Page 61</p> <p>1 SUSSMAN</p> <p>2 how you deal with, it is not a forgery; we will</p> <p>3 definitely not proceed --</p> <p>4 MS. NIGRO: Objection --</p> <p>5 MR. ALTMAN: Withdrawn.</p> <p>6 Q. There are basically three conclusions</p> <p>7 that could come out of this, correct, in your</p> <p>8 review? One is this document is clearly forged in</p> <p>9 my opinion, correct?</p> <p>10 A. Let me hear it -- take it three --</p> <p>11 MS. NIGRO: Give him all three.</p> <p>12 Q. One possible outcome is that this is</p> <p>13 clearly a forgery, correct?</p> <p>14 A. Just -- okay, yes.</p> <p>15 Q. Correct?</p> <p>16 A. Correct.</p> <p>17 Q. Another conclusion is that I am pretty</p> <p>18 confident this is not a forgery and this is a</p> <p>19 genuine signature?</p> <p>20 A. Correct.</p> <p>21 Q. The third outcome is, I am unsure; I</p> <p>22 can't tell one way or other, correct?</p> <p>23 A. I don't agree with any of that</p> <p>24 actually. I never know. How can I know if this</p> <p>25 is a forgery or not a forgery? I don't think</p>	<p style="text-align: right;">Page 63</p> <p>1 SUSSMAN</p> <p>2 you could not tell that it was either highly</p> <p>3 likely it was forged or highly likely it was not</p> <p>4 forged?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 You can answer.</p> <p>7 A. Yes.</p> <p>8 Q. Have you ever proceeded on a claim</p> <p>9 where you believe that there was a high likelihood</p> <p>10 it was forged?</p> <p>11 A. No.</p> <p>12 Q. Have you ever not proceeded on a claim</p> <p>13 where you concluded it was highly likely it was</p> <p>14 not forged?</p> <p>15 A. I think you have to -- I can't follow</p> <p>16 it.</p> <p>17 Q. Have you ever failed to prosecute a</p> <p>18 claim where you believe that the forgery claim was</p> <p>19 bogus?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 A. Still -- sorry. Not quick enough.</p> <p>22 Q. Have you ever failed to prosecute a</p> <p>23 claim despite your belief that the forgery claim</p> <p>24 by the defendant was bogus?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 62</p> <p>1 SUSSMAN</p> <p>2 anybody knows. Northern Leasing is not present at</p> <p>3 the signing of the lease.</p> <p>4 Q. I wasn't asking you whether you knew.</p> <p>5 I was asking conclusions that you could reach.</p> <p>6 A. I am saying that I will not reach a</p> <p>7 conclusion if I don't know. I won't conclude --</p> <p>8 we are talking semantics here, but I am not going</p> <p>9 to say that I conclude this was forged; this was</p> <p>10 not.</p> <p>11 I am reviewing the file and I am making</p> <p>12 a determination whether it is appropriate to</p> <p>13 initiate legal action on it. That is what I am</p> <p>14 doing. And a factor or factors would be whether</p> <p>15 there is a legitimate defense that would move --</p> <p>16 would cause me not to take action.</p> <p>17 Q. Okay. Have you ever reviewed a forgery</p> <p>18 claim and concluded there was a high likelihood</p> <p>19 this is forged?</p> <p>20 A. Yes.</p> <p>21 Q. Have you ever reviewed a claim and</p> <p>22 concluded there is a high likelihood this is not</p> <p>23 formed?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever reviewed a claim where</p>	<p style="text-align: right;">Page 64</p> <p>1 SUSSMAN</p> <p>2 Q. That would be because other factors may</p> <p>3 have caused you not to take action besides the</p> <p>4 forgery?</p> <p>5 A. Correct.</p> <p>6 Q. Getting back to the original questions,</p> <p>7 what are the considerations and factors that you</p> <p>8 use when trying to make a determination of how</p> <p>9 likely it is that the signatures are forged?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 Asked and answered.</p> <p>12 A. Again, I don't know if you want to hear</p> <p>13 it again.</p> <p>14 Q. You didn't answer.</p> <p>15 I want to know the factors you used --</p> <p>16 not whether you prosecute the claim. I want to</p> <p>17 limit it just to, how do you go about assessing</p> <p>18 the forgery or the claim of forgery?</p> <p>19 MS. NIGRO: Objection renewed.</p> <p>20 I believe he testified to this, it is</p> <p>21 file by file, but --</p> <p>22 A. Okay. Let's talk about why -- we will</p> <p>23 take one example.</p> <p>24 We have a file. Let's talk about an</p> <p>25 individual in my office, my office --</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 SUSSMAN</p> <p>2 Q. I don't mean to interrupt you. I will</p> <p>3 put a qualification on this.</p> <p>4 I am presuming you have been provided</p> <p>5 with adequate documentation and you're not dealing</p> <p>6 with a situation where they didn't give you what</p> <p>7 you needed; where you have all the documents you</p> <p>8 asked for, the affidavit of forgery and those</p> <p>9 materials. I want to make sure in your example we</p> <p>10 were assuming that. That is all.</p> <p>11 MS. NIGRO: Do you want him to give an</p> <p>12 example of a particular case?</p> <p>13 MR. ALTMAN: He can do an example of a</p> <p>14 particular case, whatever is convenient.</p> <p>15 Q. I want to know when Northern Leasing</p> <p>16 hands on your desk, here is the affidavit of</p> <p>17 forgery; here is the surrounding information we</p> <p>18 collected. I want to know how you look at that</p> <p>19 information in assessing whether you believe there</p> <p>20 is highly a likelihood there is a forgery or not.</p> <p>21 MS. NIGRO: Objection. Asked and</p> <p>22 answered.</p> <p>23 A. Like I said before, my objective is not</p> <p>24 to determine the likelihood or unlikelihood of the</p> <p>25 existence of a valid forgery claim as much as it</p>	<p style="text-align: right;">Page 67</p> <p>1 SUSSMAN</p> <p>2 example -- that would be a context and factors,</p> <p>3 information that I would try to digest and make a</p> <p>4 decision about whether it is appropriate or not to</p> <p>5 proceed.</p> <p>6 That is not a full -- I am just -- off</p> <p>7 the top -- you know, besides looking -- obviously</p> <p>8 -- the obvious analysis at my own level, the</p> <p>9 documents, the signatures, the affidavit, if any,</p> <p>10 et cetera.</p> <p>11 Q. If the signatures obviously don't</p> <p>12 match, does that --</p> <p>13 MS. NIGRO: Objection -- sorry. The</p> <p>14 word obviously.</p> <p>15 Q. If the signatures obviously to you do</p> <p>16 not match, does that trump all of those other</p> <p>17 factors?</p> <p>18 A. No.</p> <p>19 Q. If I understand what you're saying,</p> <p>20 even if it is clearly; visibly does not appear to</p> <p>21 be the same signature, you might still proceed</p> <p>22 with the case anyway?</p> <p>23 MS. NIGRO: Objection. He already</p> <p>24 testified he is not a handwriting expert.</p> <p>25 That has been asked and answered.</p>
<p style="text-align: right;">Page 66</p> <p>1 SUSSMAN</p> <p>2 is to evaluate whether this file is -- it is</p> <p>3 appropriate for me to proceed on this file.</p> <p>4 Now in doing that, part of it is, well,</p> <p>5 has a claim of forgery been asserted and has it</p> <p>6 been substantiated and what are the factors</p> <p>7 surrounding that.</p> <p>8 I would -- I and my staff would take --</p> <p>9 initially my staff, the way it is now, and then me</p> <p>10 at the end when I make that final decision will</p> <p>11 take a look at, for example, when was the claim</p> <p>12 asserted, in what context; what was the history of</p> <p>13 the communication between the parties, the</p> <p>14 performance, payments made; what is the</p> <p>15 documentation in the file; was there a</p> <p>16 verification; was there a delivery and acceptance</p> <p>17 receipt; did the client -- did the guarantor or</p> <p>18 the merchant -- is there indications in the file</p> <p>19 that the lessee was using the equipment and was a</p> <p>20 happy paying customer, et cetera, et cetera.</p> <p>21 That would tend to show that they were</p> <p>22 fully aware of a lease agreement. There was a</p> <p>23 contractual relationship and then when there was a</p> <p>24 default years later, and an attempt to collect on</p> <p>25 the lease, a claim is asserted, that would be an</p>	<p style="text-align: right;">Page 68</p> <p>1 SUSSMAN</p> <p>2 MR. ALTMAN: Strike that. I will take</p> <p>3 a step back.</p> <p>4 Q. You look at the signatures and compare</p> <p>5 the signature, do you not?</p> <p>6 A. Sure.</p> <p>7 Q. Have you ever seen signatures where</p> <p>8 they obviously are not the same signature?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 Q. Obviously to you.</p> <p>11 MS. NIGRO: Objection.</p> <p>12 A. I have seen a signature on a lease</p> <p>13 agreement that looks one way and I have seen a</p> <p>14 signature on a license that looks another way and</p> <p>15 a signature that looks another way and four</p> <p>16 different signatures that don't match -- don't</p> <p>17 obviously match each other to my eyes. I have</p> <p>18 seen that. I have seen numerous other</p> <p>19 combinations of matching, not matching, et cetera.</p> <p>20 I have seen all that.</p> <p>21 I don't claim, like I said, to be a</p> <p>22 handwriting expert, but it is heart of my</p> <p>23 analysis, certainly.</p> <p>24 Q. Why don't you retain a handwriting</p> <p>25 expert when there appears to not be a match?</p>

17 (Pages 65 to 68)

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1 SUSSMAN
 2 MS. NIGRO: Objection.
 3 A. A number of reasons.
 4 Q. Please explain.
 5 MS. NIGRO: I think you're asking him
 6 -- you're skating close to his work product,
 7 so I will give you a little leeway but nothing
 8 is waived.
 9 A. One obvious explanation to me is if a
 10 claim is 1500 -- excuse me, and it has been
 11 referred to my office for collection and an issue
 12 of forgery has arisen, I have no -- it is not
 13 clear; it is not obvious one way or another; it is
 14 hard to tell, I think a handwriting -- to retain a
 15 handwriting expert would cost nearly as much as
 16 the actual debt, so it wouldn't make sense to do
 17 that. That is one reason.
 18 Q. Are there others?
 19 A. I believe so. I haven't thought it
 20 through.
 21 No. That would suffice, I would stop
 22 right there.
 23 Q. You said in cases that have actually
 24 been filed, you have sometimes used handwriting
 25 experts, correct?

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1 SUSSMAN
 2 MS. NIGRO: Objection. You can answer.
 3 A. I vaguely recall.
 4 Q. Does that mean it hasn't happened very
 5 often?
 6 A. Correct.
 7 Q. Can you approximate how many times you
 8 used a handwriting expert?
 9 A. No.
 10 Q. Is it more than five?
 11 MS. NIGRO: Objection.
 12 A. I don't know.
 13 Q. You have no --
 14 MS. NIGRO: Objection.
 15 MR. ALTMAN: Let me finish the
 16 question.
 17 MS. NIGRO: You're about to ask him the
 18 same question.
 19 Q. Do you have a way to find out the
 20 answer to that question?
 21 A. Not in a way that I would get an
 22 accurate -- a fully accurate answer.
 23 Q. Do you have the name -- if you needed a
 24 handwriting expert, do you have one that you would
 25 call?

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1 SUSSMAN
 2 A. Not offhand, no.
 3 Q. You're aware in this case a handwriting
 4 expert was retained, correct?
 5 A. I -- I am not aware of, at the moment.
 6 MR. ALTMAN: I will mark this document
 7 as Exhibit 107. It is the report from Applied
 8 Forensics LLC dated July 18, 2010 signed by
 9 Dennis Ryan, R Y A N.
 10 (Exhibit 107, report from Applied
 11 Forensics LLC dated July 18, 2010, marked for
 12 identification, as of this date.)
 13 Q. I am not going to ask you detailed
 14 questions about it. I just want to know, have you
 15 ever seen this report?
 16 A. No.
 17 Q. Were you aware that the expert
 18 concluded that he could not determine that any of
 19 the signatures were genuine on the leases?
 20 MS. NIGRO: Objection.
 21 He just testified he wasn't even aware
 22 that there was an expert report.
 23 MR. ALTMAN: No. He said he hadn't
 24 seen it.
 25 MS. NIGRO: No. Right before that, are

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1 SUSSMAN
 2 you aware that a handwriting expert was
 3 retained.
 4 MR. ALTMAN: Okay.
 5 Q. If you had had a handwriting expert in
 6 the underlying cases who had said that he believed
 7 that -- that he could not tell the signatures were
 8 genuine, would you still have proceeded with those
 9 cases?
 10 MS. NIGRO: Objection. Hypothetical.
 11 A. I probably would not have proceeded.
 12 MR. ALTMAN: Off the record.
 13 THE VIDEOGRAPHER: The time is now
 14 11:53 a.m. We are off the record.
 15 (Off the record.)
 16 THE VIDEOGRAPHER: The time is now
 17 12:08 p.m. We are back on the record.
 18 MR. ALTMAN: A couple of things I want
 19 to clean up before we continue that I had
 20 forgotten to ask.
 21 Q. Number one, do you pay rent to NLS for
 22 the space?
 23 A. No.
 24 Q. Has that always been the case since you
 25 have been there -- since you have been working for

18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 SUSSMAN</p> <p>2 NLS in this capacity --</p> <p>3 MS. NIGRO: Objection.</p> <p>4 Q. -- since you have been representing NLS</p> <p>5 in this capacity?</p> <p>6 A. There was a period of time where we</p> <p>7 negotiated my arrangement and -- well, I don't</p> <p>8 provide them with a rent check for the space.</p> <p>9 That has never -- I have never done that.</p> <p>10 Q. The attorney's fee that is cited in the</p> <p>11 complaints, do you receive that entire amount?</p> <p>12 A. No.</p> <p>13 Q. What is the basis of the calculation of</p> <p>14 those numbers?</p> <p>15 A. The lease contract provides for</p> <p>16 recovery in the event of -- of an attorney's fee</p> <p>17 in the event of a default.</p> <p>18 Generally, the leases provide for</p> <p>19 recovery of 1500 or 25 percent of amount of the</p> <p>20 claim, whichever is greater. That is what the</p> <p>21 leases typically provide, 1500 or 25 percent of</p> <p>22 the amount of the claim, whichever amount is</p> <p>23 greater.</p> <p>24 So I recommended when I started doing</p> <p>25 the work that the complaint demand 20 percent as a</p>	<p style="text-align: right;">Page 75</p> <p>1 SUSSMAN</p> <p>2 compensation and the agreements between</p> <p>3 attorneys and clients are not discoverable.</p> <p>4 MR. ALTMAN: I am not asking for the</p> <p>5 exact amount. I am entitled to understand</p> <p>6 because of the nature -- the allegations are</p> <p>7 that the lawsuits are being used as a way of</p> <p>8 furthering an overall plan, I think we are</p> <p>9 entitled to know the financial incentive of</p> <p>10 the lawyer. I am not going to ask for -- I</p> <p>11 won't ask him to tell me how much you get from</p> <p>12 NLS.</p> <p>13 I am asking him generally where his</p> <p>14 money comes from.</p> <p>15 MS. NIGRO: You're asking him about</p> <p>16 compensation from his client, from the</p> <p>17 services provided to his client. I know that</p> <p>18 we have already had this battle with respect</p> <p>19 to plaintiffs' retainer agreement. I don't</p> <p>20 understand how that doesn't go both ways.</p> <p>21 I also don't agree with your assessment</p> <p>22 that this is somehow relevant to the claims of</p> <p>23 the case.</p> <p>24 MR. ALTMAN: Off the record.</p> <p>25 THE VIDEOGRAPHER: The time is 12:13</p>
<p style="text-align: right;">Page 74</p> <p>1 SUSSMAN</p> <p>2 standard procedure; 20 percent of the claim as</p> <p>3 attorneys' fees, contractual attorneys fees.</p> <p>4 Q. You said the greater of 1500?</p> <p>5 A. Or 25 percent.</p> <p>6 Q. Well, most of these claims are for</p> <p>7 3000, so you never go for 1500 which would be</p> <p>8 greater than in almost every lease?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. Correct.</p> <p>11 Q. I am trying to understand your answer,</p> <p>12 the greater of which means you would always be</p> <p>13 getting -- asking for 1500?</p> <p>14 A. The leases provide for the lessor's</p> <p>15 recovery of that amount. In reality, I don't</p> <p>16 demand that in the complaint on behalf of the</p> <p>17 company, but instead demand -- it has been the</p> <p>18 practice for a while, 20 percent of the amount of</p> <p>19 the claim.</p> <p>20 Q. In terms of compensation, do you get a</p> <p>21 percentage of the recovery, if any?</p> <p>22 MS. NIGRO: I will object. His</p> <p>23 compensation -- we have talked about this.</p> <p>24 With respect to retainer agreements of</p> <p>25 the plaintiffs between him and Chris, that</p>	<p style="text-align: right;">Page 76</p> <p>1 SUSSMAN</p> <p>2 p.m. We are off the record.</p> <p>3 (Discussion off the record.)</p> <p>4 THE VIDEOGRAPHER: The time is 12:13</p> <p>5 p.m. We are back on the record.</p> <p>6 MR. ALTMAN: Notwithstanding your</p> <p>7 objection, which is not frankly -- I will ask</p> <p>8 this.</p> <p>9 Q. My question still stands, how generally</p> <p>10 are you compensated by NLS?</p> <p>11 MS. NIGRO: I will ask you not to</p> <p>12 answer that.</p> <p>13 MR. ALTMAN: What is your basis for</p> <p>14 that instruction?</p> <p>15 MS. NIGRO: It is not relevant to this</p> <p>16 case and I haven't been able to ask those</p> <p>17 questions of plaintiffs either. They are the</p> <p>18 ones claiming attorneys' fees and punitive</p> <p>19 damages in this case.</p> <p>20 MR. ALTMAN: Frankly, that is not a</p> <p>21 legitimate basis for instructing him not to</p> <p>22 answer.</p> <p>23 MS. NIGRO: Your plaintiffs have been</p> <p>24 instructed not to answer those questions on</p> <p>25 the grounds of privilege, so I will say</p>

19 (Pages 73 to 76)

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<p>1 SUSSMAN</p> <p>2 privilege.</p> <p>3 MR. ALTMAN: That is not privileged.</p> <p>4 MS. NIGRO: The terms of his retainer</p> <p>5 agreement with --</p> <p>6 MR. ALTMAN: Is not privileged.</p> <p>7 MS. NIGRO: Really? Because the judge</p> <p>8 ruled otherwise when it came to the plaintiffs</p> <p>9 retainer agreements. Judge Quinn ruled</p> <p>10 otherwise that we weren't entitled to that</p> <p>11 information. I am sorry. You weren't here</p> <p>12 during the plaintiff's depositions. Mr.</p> <p>13 Chittur was here -- please look at me when I</p> <p>14 am talking. I will let you confer with</p> <p>15 Mr. Chittur.</p> <p>16 I just wanted to state that when I</p> <p>17 would broach that subject in that context in</p> <p>18 the plaintiffs' depositions, he would allow me</p> <p>19 to ask whether or not one exists, but I was</p> <p>20 not permitted to go any further than that; how</p> <p>21 people were being compensated; how anybody was</p> <p>22 getting paid. That has been documented in</p> <p>23 this case.</p> <p>24 MR. CHITTUR: As a general proposition,</p> <p>25 that is true. However, in this case, this is</p>	<p>1 SUSSMAN</p> <p>2 MS. NIGRO: I have already spoken</p> <p>3 enough on this record.</p> <p>4 MR. ALTMAN: Are you going to --</p> <p>5 MS. NIGRO: I will direct him --</p> <p>6 MR. ALTMAN: The only basis on which</p> <p>7 you may instruct the witness not to answer is</p> <p>8 if such information is privileged or if there</p> <p>9 is a specific order saying that that is not</p> <p>10 available or if it is harassing the witness.</p> <p>11 MS. NIGRO: That is your opinion?</p> <p>12 MR. ALTMAN: That is the rules.</p> <p>13 MS. NIGRO: One, I definitely think</p> <p>14 you're harassing the witness because this</p> <p>15 isn't relevant, but I will say that the terms</p> <p>16 of his retainer agreement with NLS are</p> <p>17 privileged.</p> <p>18 If you need a basis, of the three you</p> <p>19 just answered; that is what Mr. Chittur</p> <p>20 claimed for his clients and that is what I</p> <p>21 claim for this.</p> <p>22 Q. Are you going to listen to your lawyer</p> <p>23 in that regard?</p> <p>24 A. Yes.</p> <p>25 RLG MR. ALTMAN: We will mark this. I</p>
Page 78	Page 80
<p>1 SUSSMAN</p> <p>2 a racketeering case and the issue of how the</p> <p>3 person who actually brought the bogus lawsuits</p> <p>4 had a incentive or not is directly relevant</p> <p>5 and a material issue at bar.</p> <p>6 So there is a difference between asking</p> <p>7 a plaintiff in a general case or a party in a</p> <p>8 general case about their retainer agreement</p> <p>9 and in the specific context of this case, of</p> <p>10 how the incentive system operated for bringing</p> <p>11 this bogus lawsuit anyway.</p> <p>12 MS. NIGRO: You have spoken. I will</p> <p>13 strike both terms of the word bogus. I think</p> <p>14 that is improper.</p> <p>15 Also, we clearly disagree. Plaintiffs</p> <p>16 have claimed attorneys fees and compensation</p> <p>17 and punitive damages which we still maintain</p> <p>18 is discoverable as a damage and yet, it</p> <p>19 doesn't seem to go both ways here when we are</p> <p>20 talking about NLS's compensation agreement or</p> <p>21 Mr. Sussman's agreement with NLS in terms of</p> <p>22 his compensation for legal services.</p> <p>23 You want to call the court, we can do</p> <p>24 that.</p> <p>25 MR. ALTMAN: You need to --</p>	<p>1 SUSSMAN</p> <p>2 won't interrupt the deposition. We will</p> <p>3 pursue it later with the court and as a result</p> <p>4 of which I will not conclude this deposition</p> <p>5 at the end. I will hold this deposition open</p> <p>6 pending that resolution.</p> <p>7 MS. NIGRO: That is fine. We also made</p> <p>8 the same types of reservations.</p> <p>9 MR. ALTMAN: That is fine.</p> <p>10 Q. Mr. Sussman, are you paid a fixed fee</p> <p>11 for each claim or you are you paid on is a</p> <p>12 contingency?</p> <p>13 MS. NIGRO: Objection. Don't answer</p> <p>14 that. Same grounds.</p> <p>15 MR. ALTMAN: What are the grounds.</p> <p>16 MS. NIGRO: I have already articulated</p> <p>17 it.</p> <p>18 MR. ALTMAN: Could you articulate it.</p> <p>19 MS. NIGRO: I already did. It is the</p> <p>20 same basis. The terms of his compensation</p> <p>21 between him and his client, same -- same</p> <p>22 objection made by Mr. Chittur over here.</p> <p>23 Q. Are you going to listen to your lawyer?</p> <p>24 A. Yes.</p> <p>25 MR. ALTMAN: I will hand you what I</p>

20 (Pages 77 to 80)

<p style="text-align: right;">Page 81</p> <p>1 SUSSMAN</p> <p>2 will mark as exhibit 108. It is a document</p> <p>3 entitled CCS Users. It is three pages and it</p> <p>4 is Bates numbered NLS 02597.</p> <p>5 (Exhibit 108, document entitled CCS</p> <p>6 Users, Bates numbered NLS 02597, marked for</p> <p>7 identification, as of this date.)</p> <p>8 Q. What is CCS?</p> <p>9 A. I think we discussed this earlier. I</p> <p>10 think it is an acronym for, I think, customer and</p> <p>11 collection services. It is a data base --</p> <p>12 software that NLS uses to manage the operation of</p> <p>13 its lease portfolio.</p> <p>14 Q. That software was written in-house,</p> <p>15 correct?</p> <p>16 MS. NIGRO: Objection.</p> <p>17 You can answer if you know.</p> <p>18 A. I believe so.</p> <p>19 Q. If we go to the second page of this at</p> <p>20 the top, Joseph Sussman, attorney listed there,</p> <p>21 that is you, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Can you tell me who else from your</p> <p>24 office is on this list?</p> <p>25 MS. NIGRO: Would you like him to</p>	<p style="text-align: right;">Page 83</p> <p>1 SUSSMAN</p> <p>2 A. No.</p> <p>3 This list contains people that were</p> <p>4 employed; some are -- not all are employed, so</p> <p>5 would you like names -- what would you like?</p> <p>6 Q. If they were either employed now or</p> <p>7 were employed.</p> <p>8 A. Colleen Fluker, F L U K E R.</p> <p>9 Q. Was she an attorney?</p> <p>10 A. No. Arsellis Diaz.</p> <p>11 Q. Was she an attorney?</p> <p>12 A. No.</p> <p>13 That is it on the list right now.</p> <p>14 MR. ALTMAN: I will mark this document</p> <p>15 as Exhibit 109 which is a document Bates</p> <p>16 numbered 1314. It is an ex-parte order and it</p> <p>17 is through 1317.</p> <p>18 (Exhibit 109, document Bates numbered</p> <p>19 1314 through 1317, marked for identification,</p> <p>20 as of this date.)</p> <p>21 Q. I will hand this to you.</p> <p>22 MS. NIGRO: Has this been produced to</p> <p>23 us before?</p> <p>24 MR. ALTMAN: You produced it to us --</p> <p>25 MS. NIGRO: Good. When I hear it is an</p>
<p style="text-align: right;">Page 82</p> <p>1 SUSSMAN</p> <p>2 review the list?</p> <p>3 MR. ALTMAN: If he needs to.</p> <p>4 MS. NIGRO: Come on, don't you think,</p> <p>5 to answer your question?</p> <p>6 MR. ALTMAN: I thought it was kind of</p> <p>7 apparent.</p> <p>8 A. Zalmy Sussman on the last page is</p> <p>9 employed by my office, Z A L M Y.</p> <p>10 Q. Is that a man or woman?</p> <p>11 A. Man.</p> <p>12 Q. Is he an attorney?</p> <p>13 A. No.</p> <p>14 Q. Is he related to you?</p> <p>15 A. Yes.</p> <p>16 Q. Who is he?</p> <p>17 A. My brother.</p> <p>18 Q. What position does he have?</p> <p>19 A. At certain times -- paralegal work.</p> <p>20 On the first page I see Ari Erdfarb, E</p> <p>21 R D F A R B.</p> <p>22 Q. Is he an attorney?</p> <p>23 A. Yes.</p> <p>24 Q. Alla Glozshteyn, G L O Z S H T E Y N, A</p> <p>25 L L A. Is she an attorney?</p>	<p style="text-align: right;">Page 84</p> <p>1 SUSSMAN</p> <p>2 order, I don't assume --</p> <p>3 MR. ALTMAN: I gave a Bates number.</p> <p>4 You slammed me for the obvious before.</p> <p>5 MS. NIGRO: Touche.</p> <p>6 Q. Have you seen this document before?</p> <p>7 A. Yes.</p> <p>8 Q. Can you explain it to me generally?</p> <p>9 A. Give me a few moments. It is bringing</p> <p>10 back painful memories.</p> <p>11 As you can see from the ex-parte order,</p> <p>12 this was an order that I sought on behalf of</p> <p>13 Northern Leasing in connection with lawsuits that</p> <p>14 were filed and pending in court and where the</p> <p>15 defendants -- individual defendants in each case</p> <p>16 had defaulted, but we were unable to proceed</p> <p>17 because the court, if I remember correctly, was</p> <p>18 rejecting the service of process because the</p> <p>19 notary who signed the -- in other words, the</p> <p>20 notary for the process server's affidavit, namely</p> <p>21 Associated Services which is a process server we</p> <p>22 use in Upstate New York, it was David Martin. He</p> <p>23 notarized the -- there is a -- a portion of a --</p> <p>24 an affidavit of mailing, not the actual process</p> <p>25 server's affidavit but in certain services under</p>

21 (Pages 81 to 84)

<p style="text-align: right;">Page 85</p> <p>1 SUSSMAN</p> <p>2 the CPLR, let's say nail and mail provision where</p> <p>3 the --</p> <p>4 MS. NIGRO: What are you laughing at?</p> <p>5 You can strike that.</p> <p>6 A. Should I continue?</p> <p>7 Where a process servers say, we are</p> <p>8 seeking to serve an individual who lives in</p> <p>9 California, a process server may serve and execute</p> <p>10 an affidavit saying he delivered the papers, but</p> <p>11 in situations where the CPLR requires there be a</p> <p>12 mailing, the mailing would be done by the New</p> <p>13 York -- by Associated Services in Upstate.</p> <p>14 So David Martin would execute an</p> <p>15 affidavit of mailing; two together would comprise</p> <p>16 the proof of service filed with the court. His</p> <p>17 affidavit, he -- I am sorry. He didn't execute</p> <p>18 it. He would notarize someone in his office's</p> <p>19 affidavit of mailing.</p> <p>20 His notary stamp -- if I get this</p> <p>21 right, his stamp had that his notary expired -- I</p> <p>22 don't remember the day, let's say January 17,</p> <p>23 2003. He had renewed it but he hadn't obtained a</p> <p>24 new stamp. So the stamp -- so on March 3, 2004,</p> <p>25 he stamped -- he notarized and stamped, but the</p>	<p style="text-align: right;">Page 87</p> <p>1 SUSSMAN</p> <p>2 Q. It is important that the information in</p> <p>3 the complaint be correct?</p> <p>4 MS. NIGRO: Objection.</p> <p>5 You can answer.</p> <p>6 A. It is required.</p> <p>7 Q. Tell me what you remember about Melinda</p> <p>8 Serin in this case, the underlying lease.</p> <p>9 MS. NIGRO: Objection.</p> <p>10 You can answer.</p> <p>11 A. I remember her name. I remember -- I</p> <p>12 am aware that she brought -- one of the individual</p> <p>13 plaintiffs, but more than that, I prefer to answer</p> <p>14 a specific question.</p> <p>15 Q. Did you file the lawsuit that Northern</p> <p>16 Leasing brought against Melinda Serin?</p> <p>17 A. I don't know.</p> <p>18 MR. ALTMAN: I will mark as Exhibit</p> <p>19 110, a document with the Bates number NLS 545</p> <p>20 through 551. It is a bar coded lease</p> <p>21 document.</p> <p>22 (Exhibit 110, document with the Bates</p> <p>23 number NLS 545 through 551, marked for</p> <p>24 identification, as of this date.)</p> <p>25 MS. NIGRO: For the record, this was</p>
<p style="text-align: right;">Page 86</p> <p>1 SUSSMAN</p> <p>2 stamp said it expired already so the court</p> <p>3 rejected the papers. After looking into it, we</p> <p>4 found out that, well, it is just a stamp; he is</p> <p>5 actually notarized.</p> <p>6 So I made an application for an order</p> <p>7 to -- that -- instructing the clerks not to reject</p> <p>8 our applications for a default judgment or not</p> <p>9 invalidate the process server on that basis. That</p> <p>10 is my recollection.</p> <p>11 Q. You're aware that this lawsuit, Serin</p> <p>12 versus NLS, has been brought on behalf of six</p> <p>13 individual plaintiffs, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Mr. Sussman, when you sign a complaint,</p> <p>16 do you endeavor to verify the information in the</p> <p>17 complaint to make sure it is correct to the best</p> <p>18 of your knowledge?</p> <p>19 A. Yes.</p> <p>20 Q. If information in the complaint was not</p> <p>21 correct, that could potentially create problems,</p> <p>22 correct?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 You can answer.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 SUSSMAN</p> <p>2 this produced clipped together or you clipped</p> <p>3 this together?</p> <p>4 MR. ALTMAN: I can't tell.</p> <p>5 MS. NIGRO: Did you get this off a</p> <p>6 disk?</p> <p>7 MR. ALTMAN: We got a bunch of pages in</p> <p>8 a PDF file. I don't know that there is any</p> <p>9 document --</p> <p>10 MS. NIGRO: I just --</p> <p>11 MR. ALTMAN: I don't know that there is</p> <p>12 any document separation. It is possible that</p> <p>13 Bates number 550 is a second document that is</p> <p>14 associated with this.</p> <p>15 MS. NIGRO: That is precisely what I</p> <p>16 wanted to clarify.</p> <p>17 MR. ALTMAN: I can't tell.</p> <p>18 MS. NIGRO: Thank you. I understand.</p> <p>19 Q. My first question to you is, is the bar</p> <p>20 code cover sheet; have you seen that before --</p> <p>21 that kind of document before, not necessarily this</p> <p>22 one?</p> <p>23 A. Yes.</p> <p>24 Q. What is that?</p> <p>25 A. I don't really understand -- I should</p>

22 (Pages 85 to 88)

<p style="text-align: right;">Page 89</p> <p>1 SUSSMAN</p> <p>2 know, but I don't really understand how this</p> <p>3 works, but it is somehow the way that NLS scans</p> <p>4 documents to a particular lease file. That is the</p> <p>5 best I can do.</p> <p>6 Q. Did you have anything to do with the</p> <p>7 drafting of the lease documents -- the form lease?</p> <p>8 MS. NIGRO: Objection.</p> <p>9 A. What do you mean by the form lease?</p> <p>10 Q. The form lease that we are looking at</p> <p>11 here, starting on page 546, entitled equipment</p> <p>12 Finance Lease that appears to be four pages, did</p> <p>13 you participate in the drafting of any version of</p> <p>14 this lease, not necessarily this particular one?</p> <p>15 A. No.</p> <p>16 Q. Is that true for any of the Northern</p> <p>17 Leasing related entities?</p> <p>18 A. It is true regarding leases similar to</p> <p>19 this lease form and of this time period.</p> <p>20 Q. Are there other leases which you did</p> <p>21 help draft the form agreement?</p> <p>22 A. What -- if you mean by form agreement,</p> <p>23 a lease that Northern Leasing uses more than once</p> <p>24 for lease transactions, yes.</p> <p>25 Q. But not this lease?</p>	<p style="text-align: right;">Page 91</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: Okay.</p> <p>3 MR. ALTMAN: Now I will stipulate that</p> <p>4 there are probably multiple versions of this</p> <p>5 particular lease, some of which may have some</p> <p>6 additional writing at the bottom and the</p> <p>7 questions I am going to ask are probably not</p> <p>8 dependent on that particular issue. If there</p> <p>9 is an issue with that, we can try to find a</p> <p>10 better copy of the lease, but I want to make</p> <p>11 it clear this is what was provided to us.</p> <p>12 Q. Mr. Sussman, you are charged with</p> <p>13 enforcing NLS's rights under these lease</p> <p>14 agreements, correct?</p> <p>15 MS. NIGRO: Objection.</p> <p>16 A. Not necessarily the case.</p> <p>17 Q. Is that not generally what you do when</p> <p>18 you file a case on behalf of Northern Leasing</p> <p>19 leasing?</p> <p>20 A. It is.</p> <p>21 Q. So when you're involved, you look to</p> <p>22 this document -- you look at the allegedly signed</p> <p>23 lease agreement in that particular case to decide</p> <p>24 what the terms are that should be enforced,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 90</p> <p>1 SUSSMAN</p> <p>2 A. Correct.</p> <p>3 MS. NIGRO: For the record, I would</p> <p>4 like to point out that certain of the pages</p> <p>5 are cut off at the bottom; some of the</p> <p>6 writing.</p> <p>7 MR. ALTMAN: This is the way you</p> <p>8 produced it to us.</p> <p>9 MS. NIGRO: Well, no --</p> <p>10 MR. ALTMAN: I will stip -- what?</p> <p>11 MS. NIGRO: I think we produced it to</p> <p>12 you on a disk.</p> <p>13 MR. ALTMAN: Right, but when you print</p> <p>14 out, that is what you get.</p> <p>15 MS. NIGRO: I don't know if that is</p> <p>16 true or false, but I am stating for the record</p> <p>17 that it appears that the bottom has been cut</p> <p>18 off.</p> <p>19 MR. ALTMAN: This is an accurate</p> <p>20 representation of what was here -- I will</p> <p>21 stipulate that -- I will state on the record</p> <p>22 that I personally, myself, took the PDF files</p> <p>23 produced by NLS by its counsel to us and</p> <p>24 printed out these pages and this is what you</p> <p>25 get.</p>	<p style="text-align: right;">Page 92</p> <p>1 SUSSMAN</p> <p>2 A. Correct.</p> <p>3 Q. It is important that these leases have</p> <p>4 responsibilities that go two ways, correct.</p> <p>5 A. Correct.</p> <p>6 Q. There are some responsibilities for</p> <p>7 Northern Leasing?</p> <p>8 A. Correct.</p> <p>9 Q. And there are some responsibilities for</p> <p>10 the lessee, correct?</p> <p>11 A. Correct.</p> <p>12 Q. It would be inappropriate for Northern</p> <p>13 Leasing to do things that are not permitted within</p> <p>14 the contract, correct?</p> <p>15 MS. NIGRO: Objection.</p> <p>16 A. I don't know how to answer that</p> <p>17 question. To the extent that the action is</p> <p>18 inappropriate, it is inappropriate. I don't know</p> <p>19 how to -- you need to define the relationship.</p> <p>20 Q. If Northern Leasing were to -- if the</p> <p>21 contract said \$59 a month and Northern Leasing</p> <p>22 would continuously take out \$99 a month, that</p> <p>23 would not be appropriate, correct?</p> <p>24 MS. NIGRO: Objection. Hypothetical.</p> <p>25 A. If the contract only provided for \$59,</p>

23 (Pages 89 to 92)

<p style="text-align: right;">Page 93</p> <p>1 SUSSMAN</p> <p>2 it would be inappropriate to charge \$99.</p> <p>3 Q. My first question to you is, do you</p> <p>4 recall ever reviewing the contract for Melinda</p> <p>5 Serin that is Bates 546 through 549?</p> <p>6 A. I do recall reviewing this lease</p> <p>7 agreement.</p> <p>8 Q. Do you remember reviewing it at the</p> <p>9 time that you brought -- at the time that NLS</p> <p>10 brought suit against Melinda Serin?</p> <p>11 A. No.</p> <p>12 Q. Would you have reviewed it at that</p> <p>13 time?</p> <p>14 A. If I am the -- if I -- if my law firm</p> <p>15 initiated a lawsuit, then I or someone in my</p> <p>16 office would have reviewed this lease agreement</p> <p>17 prior to initiating the lawsuit.</p> <p>18 Q. Would we expect that regardless of</p> <p>19 which attorney reviewed it, you have the same</p> <p>20 ethical responsibilities?</p> <p>21 MS. NIGRO: Objection.</p> <p>22 A. You mean --</p> <p>23 MR. ALTMAN: Strike that.</p> <p>24 Q. Should it have made a difference which</p> <p>25 lawyer in your office reviewed it in terms of how</p>	<p style="text-align: right;">Page 95</p> <p>1 SUSSMAN</p> <p>2 guidelines I have set in reviewing the</p> <p>3 appropriateness of an initiating a lawsuit, so --</p> <p>4 Q. By the way, have there been times when</p> <p>5 NLS thought a lawsuit should go forward and you</p> <p>6 had decided no, it shouldn't?</p> <p>7 MS. NIGRO: Objection.</p> <p>8 A. I answered that question already, but</p> <p>9 yes.</p> <p>10 Q. Looking at this leasing document, under</p> <p>11 the schedule of payments, it says the basic</p> <p>12 monthly lease payment is \$59, correct?</p> <p>13 A. That is what it looks like.</p> <p>14 Q. It says the lease term is 48 months,</p> <p>15 correct?</p> <p>16 A. Correct.</p> <p>17 Q. Then it says plus applicable taxes,</p> <p>18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Is there anything on that page talking</p> <p>21 about a lost damage waiver?</p> <p>22 A. Not directly.</p> <p>23 Q. Is there anything on that page talking</p> <p>24 about tax filing fees?</p> <p>25 A. I understand that to be referenced in</p>
<p style="text-align: right;">Page 94</p> <p>1 SUSSMAN</p> <p>2 this lease should have been prosecuted?</p> <p>3 A. No.</p> <p>4 Q. No matter which attorney it was, it</p> <p>5 should have been -- followed the same procedures?</p> <p>6 A. Yes.</p> <p>7 Q. Should have reviewed the same</p> <p>8 documents, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Should have read the lease to see what</p> <p>11 the terms were, correct?</p> <p>12 A. Correct, generally.</p> <p>13 I have more -- I have more</p> <p>14 responsibility, the way I have set up my law firm,</p> <p>15 to make the final decision about an issue but</p> <p>16 generally, the guidelines would be the same from</p> <p>17 one attorney to the next.</p> <p>18 Q. Does any lawsuit get filed that you</p> <p>19 don't personally review?</p> <p>20 A. Yes.</p> <p>21 Q. What would the guidelines be for a</p> <p>22 lawsuit being filed without your review?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 A. I think I described the process which</p> <p>25 we -- and I mean my office, utilizes -- the</p>	<p style="text-align: right;">Page 96</p> <p>1 SUSSMAN</p> <p>2 applicable taxes.</p> <p>3 Q. A filing fee is in applicable taxes?</p> <p>4 A. It is a reference to taxes and what is</p> <p>5 associated with taxes as defined in the agreement.</p> <p>6 Q. So if I were to read this agreement, it</p> <p>7 is going to tell me that NLS is going to charge a</p> <p>8 certain amount of money for filing -- that gets</p> <p>9 paid to NLS?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 MR. ALTMAN: Can I --</p> <p>12 MS. NIGRO: Sorry.</p> <p>13 Q. I will start over.</p> <p>14 If I understand what you're saying, if</p> <p>15 I read this lease agreement here in the section on</p> <p>16 taxes, it is going to tell me that NLS will also</p> <p>17 charge a fee that does not get paid to anybody</p> <p>18 that goes to NLS for filing the tax paperwork?</p> <p>19 A. I don't know --</p> <p>20 MS. NIGRO: Objection to the extent</p> <p>21 that the document speaks for itself.</p> <p>22 A. That is my response as well.</p> <p>23 MR. ALTMAN: Thank you for coaching.</p> <p>24 MS. NIGRO: That is not fair.</p> <p>25 A. Then I will give -- those are my words.</p>

24 (Pages 93 to 96)

Page 97	Page 99
<p>1 SUSSMAN</p> <p>2 She just said it before me.</p> <p>3 Q. She is not supposed to say it before</p> <p>4 you.</p> <p>5 A. I am saying on the record that that is</p> <p>6 my response. That is my response to the question.</p> <p>7 The document provides what it provides.</p> <p>8 Q. Would you point to me where the</p> <p>9 document says that a tax filing fee will be</p> <p>10 charged?</p> <p>11 A. I don't know.</p> <p>12 Q. Well, read the lease. You have it in</p> <p>13 front of you.</p> <p>14 A. All right.</p> <p>15 Q. While you're at it -- start with that.</p> <p>16 A. I will refer you to section 7 of the</p> <p>17 lease. That is my response.</p> <p>18 Q. Show me the section here that says that</p> <p>19 a tax filing fee will be collected.</p> <p>20 A. My response to the question is whether</p> <p>21 there is a reference on the first page to a</p> <p>22 potential tax filing fee the way you have</p> <p>23 described it, the way you described it is -- my</p> <p>24 response is to the extent that the document</p> <p>25 provides for it. If you like me to read the</p>	<p>1 SUSSMAN</p> <p>2 number 7 where it says that NLS will charge an</p> <p>3 individual a tax filing fee?</p> <p>4 MS. NIGRO: Objection.</p> <p>5 A. I don't think I said that, but what I</p> <p>6 had previously stated was that to the extent that</p> <p>7 the document provides for it, anywhere in the</p> <p>8 document, it is referenced by the words plus</p> <p>9 applicable taxes on the first page.</p> <p>10 I will read section 7 of the lease</p> <p>11 agreement. Lessee intends the monthly lease</p> <p>12 payments hereunder to be net to lessor, and lessee</p> <p>13 shall pay all sales, use, excise, personal</p> <p>14 property, stamp, documentary, gross receipt,</p> <p>15 occupation and other taxes, license and</p> <p>16 registration fees, assessments fines, penalties</p> <p>17 and other charges imposed on the ownership</p> <p>18 possession or use of the equipment during the term</p> <p>19 of this lease. Lessor will add such taxes, fees</p> <p>20 and other charges to the monthly payments</p> <p>21 hereunder including handling costs.</p> <p>22 To the extent that such taxes fees and</p> <p>23 other charges are not imposed in equal monthly</p> <p>24 payments, lessor may estimate the amount thereof,</p> <p>25 et cetera.</p>
Page 98	Page 100
<p>1 SUSSMAN</p> <p>2 provision, I will be happy to.</p> <p>3 Q. Sorry --</p> <p>4 A. That I am referring to.</p> <p>5 Q. I will take a step back.</p> <p>6 Are you aware that NLS charges some</p> <p>7 individuals a fee simply for the purposes of</p> <p>8 paying taxes?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 MR. ALTMAN: What is the nature of your</p> <p>11 objection?</p> <p>12 MS. NIGRO: First of all, form. Second</p> <p>13 of all --</p> <p>14 MR. ALTMAN: I want to fix it.</p> <p>15 MS. NIGRO: You told me we have the</p> <p>16 usual stip.</p> <p>17 MR. ALTMAN: That is fine. So</p> <p>18 relevance, but what is the objection to form?</p> <p>19 MS. NIGRO: Read back the question.</p> <p>20 (Record read.)</p> <p>21 MS. NIGRO: You're making a statement.</p> <p>22 Q. Does NLS charge certain individuals a</p> <p>23 tax filing fee?</p> <p>24 A. I don't know.</p> <p>25 Q. Can you show me in the provision for</p>	<p>1 SUSSMAN</p> <p>2 Q. Does anything that you read there say</p> <p>3 that NLS will collect a fee payable to NLS for it</p> <p>4 accepting in a tax form?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 A. You're asking for my opinion about</p> <p>7 whether this document provides for such a right?</p> <p>8 Q. I am asking you where it says it.</p> <p>9 You're the attorney who prosecutes</p> <p>10 claims on behalf of NLS in certain cases. You're</p> <p>11 charged with interpreting the terms of this lease.</p> <p>12 I am asking you, where does it say that NLS will</p> <p>13 collect a fee for filing tax returns?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 A. It is not -- that provision is not</p> <p>16 relevant to my analysis of whether to enforce a</p> <p>17 breach of contract claim for remaining lease</p> <p>18 payments.</p> <p>19 Having said that, handling costs to me</p> <p>20 seems --</p> <p>21 Q. Where is that?</p> <p>22 A. In the middle of the paragraph. That</p> <p>23 to me is a reference to overhead incurred by the</p> <p>24 lessor in handling, filing such taxes.</p> <p>25 Q. Is the handling cost described anywhere</p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 SUSSMAN</p> <p>2 in this document?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 A. I don't know.</p> <p>5 Q. You have the document in front of you.</p> <p>6 A. Do you want me to spend the time to</p> <p>7 read it?</p> <p>8 MS. NIGRO: It is up to you. You have</p> <p>9 got seven hours.</p> <p>10 Q. Where should an individual who is</p> <p>11 reviewing this lease look for handling costs?</p> <p>12 MS. NIGRO: Objection.</p> <p>13 A. I don't know. If I were a lessee, I</p> <p>14 would review the lease agreement.</p> <p>15 Q. Right. So where would a lessee expect</p> <p>16 to find handling costs if that is what that even</p> <p>17 means?</p> <p>18 MS. NIGRO: Objection. It depends in</p> <p>19 what context we are talking about.</p> <p>20 Q. Well, you know what --</p> <p>21 MS. NIGRO: I would like to talk to you</p> <p>22 outside.</p> <p>23 MR. ALTMAN: Off --</p> <p>24 THE VIDEOGRAPHER: The time is now</p> <p>25 12:50 p.m. We are off the record.</p>	<p style="text-align: right;">Page 103</p> <p>1 SUSSMAN</p> <p>2 line by line to answer whether the amount of the</p> <p>3 handling charge is defined anywhere in the lease?</p> <p>4 MS. NIGRO: I thought the question was</p> <p>5 -- sorry.</p> <p>6 A. I can guess and give you an answer, but</p> <p>7 to answer it correctly, it would require me to</p> <p>8 read the entire lease agreement.</p> <p>9 Q. I am curious about your guess.</p> <p>10 MS. NIGRO: It is not admissible.</p> <p>11 MR. ALTMAN: I am entitled to it.</p> <p>12 A. It is not in there.</p> <p>13 MR. ALTMAN: Let's break for lunch.</p> <p>14 THE VIDEOGRAPHER: The time is now</p> <p>15 12:55 p.m.</p> <p>16 (Luncheon recess: 12:55 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 102</p> <p>1 SUSSMAN</p> <p>2 (Recess taken.)</p> <p>3 MR. ALTMAN: Read back the last</p> <p>4 question.</p> <p>5 (Record read.)</p> <p>6 THE VIDEOGRAPHER: The time is now</p> <p>7 12:54 p.m. We are back on the record.</p> <p>8 A. My response, I think was and is, it</p> <p>9 depends on in what context we are talking about.</p> <p>10 A lessee would expect what? A reference to</p> <p>11 handling costs in what context?</p> <p>12 Q. Well, if he was going to be charged</p> <p>13 handling costs, if that is what that means, and</p> <p>14 tax filing fees falls under -- a fee for filing</p> <p>15 the tax return falls under that, where would he go</p> <p>16 to find out what that number is?</p> <p>17 MS. NIGRO: Objection.</p> <p>18 A. The leasing company.</p> <p>19 Q. To the best of your knowledge, without</p> <p>20 a detailed -- would it require a detailed study</p> <p>21 for you to answer whether the amount of the</p> <p>22 handling charge, if that is what it is, is</p> <p>23 disclosed in the lease?</p> <p>24 MS. NIGRO: Detailed study of what?</p> <p>25 Q. Do you need to read the entire lease</p>	<p style="text-align: right;">Page 104</p> <p>1 SUSSMAN</p> <p>2 AFTERNOON SESSION</p> <p>3 (Time noted: 1:54 p.m.)</p> <p>4 JOSEPH I. SUSSMAN, resumed and</p> <p>5 testified as follows:</p> <p>6 CONTINUED EXAMINATION</p> <p>7 BY MR. ALTMAN:</p> <p>8 THE VIDEOGRAPHER: The time is now 1:54</p> <p>9 p.m. We are back on the record.</p> <p>10 Q. Before we broke for lunch, I had some</p> <p>11 questions for you about the lease.</p> <p>12 You see there are numbered sections on</p> <p>13 the lease, correct?</p> <p>14 A. Yes.</p> <p>15 Q. I think it goes from 1 up to --</p> <p>16 A. One to 25.</p> <p>17 Q. Is any one of those 25 things handling</p> <p>18 charges?</p> <p>19 A. I don't think so.</p> <p>20 Q. When you filed suit on behalf of</p> <p>21 Northern Leasing for the dollar amount that you</p> <p>22 would claim was the outstanding balance would be</p> <p>23 simply the number of lease payments not already</p> <p>24 paid, plus the number of remaining lease payments,</p> <p>25 correct?</p>

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 SUSSMAN</p> <p>2 A. Correct.</p> <p>3 Q. You wouldn't include amounts for lost</p> <p>4 damage waivers?</p> <p>5 A. Correct.</p> <p>6 Q. You wouldn't include property tax,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. So it was just purely the lease</p> <p>10 payments?</p> <p>11 A. Correct.</p> <p>12 Q. If Northern Leasing had collected</p> <p>13 moneys it was not entitled to when it was</p> <p>14 receiving payments, then when you filed suit, the</p> <p>15 amount of money should have been adjusted to</p> <p>16 reflect that, correct?</p> <p>17 MS. NIGRO: Objection.</p> <p>18 A. That sounds like a legal set off,</p> <p>19 counterclaim, defense and I would take it under --</p> <p>20 I certainly would consider it as part of my</p> <p>21 analysis of whether to initiate suit.</p> <p>22 Q. I am not asking whether to initiate</p> <p>23 suit, but let's say, for example, you concluded</p> <p>24 that the lease payments plus the balance was 2500</p> <p>25 and it was clear that NLS had collected \$100 for</p>	<p style="text-align: right;">Page 107</p> <p>1 SUSSMAN</p> <p>2 a little less than that amount or something</p> <p>3 significantly less than that amount, but if there</p> <p>4 is a good faith basis for asserting an amount and</p> <p>5 there is a defense out there that might say, well,</p> <p>6 that amount should be set off by X amount of</p> <p>7 dollars, that doesn't preclude an attorney from</p> <p>8 making a demand if he has a good faith basis</p> <p>9 for -- to do that in a breach of contract, but you</p> <p>10 have a defense that can be set off.</p> <p>11 So the question is if I needed to</p> <p>12 determine as a judge or anybody else for whatever</p> <p>13 purpose the precise amount that Northern Leasing</p> <p>14 is entitled to after everything is all adjusted,</p> <p>15 yes. But again, wearing the hat that I wear, I</p> <p>16 think I stated on the record, it would be</p> <p>17 something that would I would take into</p> <p>18 consideration.</p> <p>19 Q. When you say in your complaint that</p> <p>20 there is a balance remaining, you're making a</p> <p>21 fairly definitive statement, aren't you?</p> <p>22 MS. NIGRO: Objection.</p> <p>23 A. Yes.</p> <p>24 Q. When you say there is a balance</p> <p>25 remaining, that should reflect -- that should</p>
<p style="text-align: right;">Page 106</p> <p>1 SUSSMAN</p> <p>2 some kind of fees that it was not entitled to,</p> <p>3 would you take that overcharge into account when</p> <p>4 deciding how much money the defendant actually</p> <p>5 owed?</p> <p>6 MS. NIGRO: Objection:</p> <p>7 A. It is hypothetical, the question, and</p> <p>8 so I will answer a hypothetical question.</p> <p>9 I would if --</p> <p>10 Q. Okay. It is not a real stretch.</p> <p>11 A. Yeah.</p> <p>12 Q. If you had looked and saw, boy, they</p> <p>13 charged \$100 for this and let's say they got an</p> <p>14 extra \$100 payment that was not reflected, you</p> <p>15 would take that into account in determining what</p> <p>16 was owed, correct?</p> <p>17 MS. NIGRO: Objection.</p> <p>18 You can answer.</p> <p>19 A. Correct, but I would -- if I was being</p> <p>20 asked or if I had to determine the precise amount</p> <p>21 that Northern Leasing is entitled to, then yes,</p> <p>22 but whether or not that is a -- as an attorney,</p> <p>23 there are ways of making a demand in a complaint.</p> <p>24 You're entitled, as you guys know, or</p> <p>25 -- to seek an amount and maybe you're entitled to</p>	<p style="text-align: right;">Page 108</p> <p>1 SUSSMAN</p> <p>2 accurately reflect how much money the client</p> <p>3 actually owes, correct?</p> <p>4 MS. NIGRO: Objection.</p> <p>5 A. Not correct.</p> <p>6 Q. Why would it not be an accurate</p> <p>7 statement of what the client owes on the lease?</p> <p>8 A. The representation or the allegation</p> <p>9 that is set forth in the complaint is that there</p> <p>10 was a default by the lessee in making a lease</p> <p>11 payment and under the lease, that triggers an</p> <p>12 acceleration clause and all unpaid and remaining</p> <p>13 lease payments become due. That is the cause of</p> <p>14 the -- the breach of contract cause of action set</p> <p>15 forth in the complaint.</p> <p>16 That is accurate regardless of whether</p> <p>17 or not there exists a defense -- a breach of</p> <p>18 contract by the lessee for taxes that were paid or</p> <p>19 handling fee or whatever other defense may exist</p> <p>20 or counterclaim or et cetera, so my representation</p> <p>21 or Northern Leasing's representation set forth in</p> <p>22 my complaint is accurate.</p> <p>23 If I moved for summary judgment on that</p> <p>24 cause of action, I could receive judgment if I put</p> <p>25 forth the case, regardless of a set off defense.</p>

27 (Pages 105 to 108)

<p style="text-align: right;">Page 109</p> <p>1 SUSSMAN</p> <p>2 It would have to be adjusted.</p> <p>3 Q. To your knowledge, has Northern Leasing</p> <p>4 ever collected taxes that it didn't pay for</p> <p>5 whatever reason?</p> <p>6 MS. NIGRO: Objection.</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. I am not suggesting intentionally, but</p> <p>9 has there ever been a time when they collected</p> <p>10 let's say a personal property -- what they thought</p> <p>11 a personal property tax was due and learned later</p> <p>12 there was no personal property tax; has that ever</p> <p>13 happened where they refund the taxes back to the</p> <p>14 customer?</p> <p>15 MS. NIGRO: Objection.</p> <p>16 A. I wouldn't know.</p> <p>17 Q. Has Northern Leasing ever been sued for</p> <p>18 collecting property taxes and not -- collecting</p> <p>19 property taxes on behalf of lessees and not</p> <p>20 actually forwarding them to the appropriate taxing</p> <p>21 authority?</p> <p>22 MS. NIGRO: Objection.</p> <p>23 A. I do not know for sure.</p> <p>24 Q. When you say you don't know for sure,</p> <p>25 do you have any recollection?</p>	<p style="text-align: right;">Page 111</p> <p>1 SUSSMAN</p> <p>2 court and Court of Appeals.</p> <p>3 Q. Is that both cases or one case?</p> <p>4 A. One case.</p> <p>5 Q. The other case?</p> <p>6 A. The other case was settled.</p> <p>7 Q. What was the allegation in the case in</p> <p>8 Texas?</p> <p>9 A. That I filed suit on a lease</p> <p>10 purportedly that was not valid. I don't recall if</p> <p>11 it was a forgery claim, but some -- that the lease</p> <p>12 was invalid for a reason I don't remember.</p> <p>13 Q. When was that suit approximately filed?</p> <p>14 A. Don't know for sure. 2005, '06.</p> <p>15 Q. When was it resolved?</p> <p>16 A. I don't remember when the decision came</p> <p>17 down.</p> <p>18 Q. You said it had been dismissed on</p> <p>19 appeal?</p> <p>20 A. Correct.</p> <p>21 Q. At the trial court level, was it found</p> <p>22 in favor of the plaintiff?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 A. If I remember correctly, we entered --</p> <p>25 counsel entered a special appearance contesting</p>
<p style="text-align: right;">Page 110</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: Objection.</p> <p>3 A. Somewhere in my mind, I recall seeing</p> <p>4 that allegation being made, but I don't recall if</p> <p>5 it was in the context of a letter or an action or</p> <p>6 something else.</p> <p>7 Q. By the way, have you personally ever</p> <p>8 been sued?</p> <p>9 A. Yes.</p> <p>10 Q. The context of these suits, were they</p> <p>11 as part of your professional activities or were</p> <p>12 they related to your personal life?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. Professional capacity.</p> <p>15 Q. How many times have you been sued?</p> <p>16 A. Three times, I think.</p> <p>17 Q. Those suits still pending?</p> <p>18 A. One of them is.</p> <p>19 Q. How were the other two resolved?</p> <p>20 MS. NIGRO: Objection. Relevance. How</p> <p>21 is this even relevant to this case?</p> <p>22 Q. What was the nature of the two suits</p> <p>23 that resolved?</p> <p>24 A. One action related -- the answer is how</p> <p>25 it was resolved? It was dismissed by appellate</p>	<p style="text-align: right;">Page 112</p> <p>1 SUSSMAN</p> <p>2 jurisdiction which I guess the special appearance</p> <p>3 was denied and reversed on appeal, so the case was</p> <p>4 dismissed on jurisdictional grounds.</p> <p>5 Q. So it was never reviewed on its merits?</p> <p>6 MS. NIGRO: Objection.</p> <p>7 A. I don't know. I understand your</p> <p>8 question. I am not sure.</p> <p>9 Q. Was there ever a trial?</p> <p>10 A. There was no trial -- no.</p> <p>11 Q. You said that was in Texas in about</p> <p>12 2005. The other case that was --</p> <p>13 A. I don't remember too well.</p> <p>14 Q. What state was it in?</p> <p>15 A. I think Connecticut.</p> <p>16 Q. About when was it?</p> <p>17 A. The last two years.</p> <p>18 Q. What was the basis of the claim?</p> <p>19 A. I believe it was that I had represented</p> <p>20 to -- I don't think it was the attorney general's</p> <p>21 office, but it was a consumer protection division</p> <p>22 or something -- in response to a lessee's</p> <p>23 complaint that was forwarded to Northern Leasing</p> <p>24 which I responded to, I had represented that the</p> <p>25 case would be dismissed because the statute of</p>

28 (Pages 109 to 112)

<p style="text-align: right;">Page 113</p> <p>1 SUSSMAN</p> <p>2 limitations had expired and I actually</p> <p>3 acknowledged that it was an over -- that that</p> <p>4 would be the appropriate action.</p> <p>5 The case wasn't dismissed. It was a</p> <p>6 mistake. Something slipped through the cracks and</p> <p>7 so that was the basis for the suit -- I think the</p> <p>8 suit was for attorney's fees when the error was</p> <p>9 pointed out and of course I took the correct</p> <p>10 action; I realized this had gotten through.</p> <p>11 So that is what that suit was about.</p> <p>12 That was resolved out of court.</p> <p>13 Q. The case that is still pending?</p> <p>14 A. That is the Just Films.</p> <p>15 Q. What is that case?</p> <p>16 A. I don't know too much about it.</p> <p>17 Q. Who is representing you in that case?</p> <p>18 A. Jennifer.</p> <p>19 Q. When was that case filed?</p> <p>20 A. Within a year.</p> <p>21 MS. NIGRO: March 2010. I can give you</p> <p>22 the caption and index. It has been moved to</p> <p>23 federal court.</p> <p>24 Q. Are you paying for that representation?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 115</p> <p>1 SUSSMAN</p> <p>2 Q. Could you point to me where on this</p> <p>3 first page it points to anything about a lost</p> <p>4 damage waiver?</p> <p>5 A. There isn't a direct reference to the</p> <p>6 specific provision about a lost damage waiver on</p> <p>7 the first page, as I said, but there are -- this</p> <p>8 is the first page of an agreement and the</p> <p>9 agreement contains a number of provisions. One of</p> <p>10 them is a loss and damage waiver. It is one</p> <p>11 agreement.</p> <p>12 Q. I understand that, but there is nothing</p> <p>13 on the first page discussing the lost damage</p> <p>14 waiver?</p> <p>15 A. Correct.</p> <p>16 Q. There isn't even an indirect</p> <p>17 reference -- if you only had this first page of</p> <p>18 this agreement and that is all that was presented</p> <p>19 to you, you wouldn't know anything about the lost</p> <p>20 damage waiver, correct?</p> <p>21 MS. NIGRO: Hypothetical.</p> <p>22 You can answer.</p> <p>23 A. Correct.</p> <p>24 Q. That is what I wanted to know.</p> <p>25 Going to section 9 of the lease, is the</p>
<p style="text-align: right;">Page 114</p> <p>1 SUSSMAN</p> <p>2 Q. Who is paying for that representation?</p> <p>3 A. Northern Leasing.</p> <p>4 Q. What kind of case is that?</p> <p>5 MS. NIGRO: It is a RICO case,</p> <p>6 purported class action with roughly 35</p> <p>7 defendants all represented by various lawyers.</p> <p>8 Q. Going back to the front page of the</p> <p>9 lease in the schedule of payments, is there</p> <p>10 anything there in terms of a lost damage waiver?</p> <p>11 MS. NIGRO: Objection. Asked and</p> <p>12 answered but if not, go ahead.</p> <p>13 A. In the schedule of payment box, no.</p> <p>14 Q. Is there anything on the entire front</p> <p>15 of the lease discussing lost damage waivers or</p> <p>16 insurance?</p> <p>17 MS. NIGRO: Objection. You can answer.</p> <p>18 A. Not directly.</p> <p>19 Q. Is it in directly?</p> <p>20 A. Yes.</p> <p>21 Q. Where is it indirectly?</p> <p>22 A. There are references to other</p> <p>23 provisions of the lease agreement and loss and</p> <p>24 damage waiver is another prevision set forth in</p> <p>25 the lease agreement.</p>	<p style="text-align: right;">Page 116</p> <p>1 SUSSMAN</p> <p>2 amounts of the lost damage waiver actually defined</p> <p>3 anywhere in section 9?</p> <p>4 A. The last part of section 9 states that</p> <p>5 if lessee does not provide evidence of insurance,</p> <p>6 lessee is deemed to have chosen to buy the loss</p> <p>7 and destruction waiver at the price in effect;</p> <p>8 price which lessor reserves the right to change</p> <p>9 from time to time.</p> <p>10 So that is -- that is the provision in</p> <p>11 response to your question.</p> <p>12 Q. Is the dollar amount anywhere in that</p> <p>13 section?</p> <p>14 A. No.</p> <p>15 Q. So somebody reading this lease would</p> <p>16 have no idea what that loss damage waiver is,</p> <p>17 correct?</p> <p>18 MS. NIGRO: Objection.</p> <p>19 A. Not -- certainly upon further inquiry</p> <p>20 it is very easily determinable.</p> <p>21 Q. Somebody reading this lease would not</p> <p>22 know what the loss damage waiver is?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 A. If somebody was reading the lease and</p> <p>25 decided not to take any action to become aware of</p>

29 (Pages 113 to 116)

<p style="text-align: right;">Page 117</p> <p>1 SUSSMAN</p> <p>2 that amount.</p> <p>3 Q. Simple question.</p> <p>4 MS. NIGRO: Asked and answered.</p> <p>5 Q. If somebody just read this lease, they</p> <p>6 would have no idea how much the lost damage waiver</p> <p>7 is, correct?</p> <p>8 MS. NIGRO: Objection.</p> <p>9 A. Correct.</p> <p>10 Q. A few lines up from that, it says --</p> <p>11 can you read out -- about five sentences down,</p> <p>12 there is a sentence that starts with all such.</p> <p>13 Can you read that out loud?</p> <p>14 A. All such policies shall provide that</p> <p>15 such insurance shall not be canceled or modified</p> <p>16 as against lessor due to any act or neglect on the</p> <p>17 part of lessee or all -- I can't read that word.</p> <p>18 MS. NIGRO: Any.</p> <p>19 A. -- or any other party.</p> <p>20 Continue?</p> <p>21 Q. Yes.</p> <p>22 A. Lessee shall pay the premiums for such</p> <p>23 insurance and deliver to lessor satisfactory</p> <p>24 evidence of the insurance coverage required</p> <p>25 hereunder on or before the commencement date as</p>	<p style="text-align: right;">Page 119</p> <p>1 SUSSMAN</p> <p>2 another option.</p> <p>3 Q. When is the proof of insurance due?</p> <p>4 A. It can be provided, from my</p> <p>5 understanding is that at any point during the</p> <p>6 lease. That is my understanding. I could be</p> <p>7 wrong.</p> <p>8 Q. It says, shall be provided as requested</p> <p>9 by the lessor, doesn't it?</p> <p>10 A. Where is that? The sentence that I</p> <p>11 read?</p> <p>12 Q. When it says lessee shall pay the</p> <p>13 premiums for such insurance and deliver to lessor</p> <p>14 satisfactory evidence of insurance coverage</p> <p>15 required hereunder on or before the commencement</p> <p>16 date as requested by lessor.</p> <p>17 So the lessor has to request what they</p> <p>18 want, correct?</p> <p>19 MS. NIGRO: Objection.</p> <p>20 You can answer.</p> <p>21 A. If the lessor wants to request</p> <p>22 something, it needs to make the request, correct.</p> <p>23 Q. And a condition precedent -- you</p> <p>24 understand what a condition precedent is, correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 118</p> <p>1 SUSSMAN</p> <p>2 requested by lessor.</p> <p>3 Q. That is fine.</p> <p>4 So in other words, a person has to --</p> <p>5 lessor, that is NLS?</p> <p>6 A. Correct.</p> <p>7 Q. The lessor has to provide proof of</p> <p>8 insurance as requested by NLS, correct?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. They are not required to. It is an</p> <p>11 option of the lessee to provide -- the way I</p> <p>12 understand the lease or this provision, to provide</p> <p>13 proof of insurance. It is not an absolute</p> <p>14 requirement.</p> <p>15 Q. Well, the first sentence says, lessee</p> <p>16 shall keep the equipment insured, doesn't it?</p> <p>17 A. Correct.</p> <p>18 Q. That is not an option, is it?</p> <p>19 MS. NIGRO: Objection. That is not the</p> <p>20 question you asked him.</p> <p>21 A. I understand your question.</p> <p>22 The reason I am saying that is because</p> <p>23 since the lease also provides for an alternative</p> <p>24 in the event that the proof of insurance is not</p> <p>25 provided, in effect, it provides the lessee with</p>	<p style="text-align: right;">Page 120</p> <p>1 SUSSMAN</p> <p>2 Q. -- to charging the lost damage waiver</p> <p>3 is that proof of insurance is not provided,</p> <p>4 correct?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 A. Correct.</p> <p>7 Q. If the lessor, NLS, has to ask for</p> <p>8 proof of insurance and they don't do so, how can a</p> <p>9 person have failed to provide it?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 A. Well, I actually take back my -- I take</p> <p>12 back my answer.</p> <p>13 If the question was -- I am sorry.</p> <p>14 What I had stated earlier is that the lessee is</p> <p>15 provided with two options, that is still my</p> <p>16 understanding.</p> <p>17 If the lessee would like to provide --</p> <p>18 the contract provides that the lessee shall</p> <p>19 provide proof of insurance, but the same contract</p> <p>20 also provides for another alternative.</p> <p>21 Q. Which has a condition precedent that</p> <p>22 they don't provide proof of insurance?</p> <p>23 A. Right.</p> <p>24 MS. NIGRO: Objection.</p> <p>25 Q. My question to you is, according to the</p>

30 (Pages 117 to 120)

<p style="text-align: right;">Page 121</p> <p>1 SUSSMAN</p> <p>2 contract that you're charged with enforcing or</p> <p>3 enforcing NLS's rights for, when is the lessee</p> <p>4 required to provide proof of insurance before they</p> <p>5 agree to the loss damage waiver?</p> <p>6 MS. NIGRO: Objection.</p> <p>7 A. I also object to the question because I</p> <p>8 am not entrusted -- that isn't my responsibility,</p> <p>9 but a lessee -- prior to being charged the loss</p> <p>10 and damage waiver -- and I would require a careful</p> <p>11 reading of this provision -- I am speculating now</p> <p>12 because the lessor would be entitled to charge the</p> <p>13 loss and damage waiver as long as proof of</p> <p>14 insurance has not been provided.</p> <p>15 Q. As requested by the lessor?</p> <p>16 A. I don't know if that is what that</p> <p>17 means.</p> <p>18 Q. It says that --</p> <p>19 MS. NIGRO: Objection.</p> <p>20 What is the relevance of this?</p> <p>21 Q. Here is my question to you,</p> <p>22 Mr. Sussman. You're an attorney, right? You have</p> <p>23 read this provision we have been talking about.</p> <p>24 You're not quite sure what it means. Yes?</p> <p>25 MS. NIGRO: Objection. The witness</p>	<p style="text-align: right;">Page 123</p> <p>1 SUSSMAN</p> <p>2 insurance, you agree to the lost damage waiver?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 A. That would be clearer.</p> <p>5 MS. NIGRO: Are you done questioning</p> <p>6 things now in the Gagalouses matter? Can we</p> <p>7 get back to Serin which is a matter pending in</p> <p>8 the Eastern District.</p> <p>9 Q. Mr. Sussman, would you agree that if</p> <p>10 Melinda Serin was charged for lost damage waivers</p> <p>11 that really are not in accordance with the</p> <p>12 contract, that those amounts should have been set</p> <p>13 off against the amount of money you claim she did</p> <p>14 owe?</p> <p>15 MS. NIGRO: Objection. Hypothetical.</p> <p>16 A. I don't agree.</p> <p>17 Q. If she paid money -- I want to make</p> <p>18 sure I understand.</p> <p>19 If she said -- let's say 49.95 for lost</p> <p>20 damage waivers that NLS was not entitled to</p> <p>21 collect because there was some finding that they</p> <p>22 weren't entitled to, that shouldn't have offset</p> <p>23 what you claim she did owe?</p> <p>24 MS. NIGRO: Objection.</p> <p>25 A. I stated earlier that if that was the</p>
<p style="text-align: right;">Page 122</p> <p>1 SUSSMAN</p> <p>2 testified he didn't write this contract.</p> <p>3 MR. ALTMAN: I don't care.</p> <p>4 Q. You're not quite sure what this</p> <p>5 provision means, correct?</p> <p>6 MS. NIGRO: Objection.</p> <p>7 A. At this very moment, no.</p> <p>8 Q. So an individual who is not a lawyer</p> <p>9 even reading this is charged with a higher level</p> <p>10 of understanding than you?</p> <p>11 MS. NIGRO: Objection.</p> <p>12 A. Absolutely not.</p> <p>13 Q. Wouldn't you agree that the company</p> <p>14 could have done a better job of making a lessee</p> <p>15 aware of the need to provide proof of insurance</p> <p>16 before subjecting themselves to a lost damage</p> <p>17 waiver by putting that on the front page?</p> <p>18 MS. NIGRO: Objection.</p> <p>19 A. I would say that this information is</p> <p>20 readily available to any lessee.</p> <p>21 Q. You didn't answer my question.</p> <p>22 Wouldn't you agree it would make the</p> <p>23 term more clear if on the front page where it</p> <p>24 talks about how much they are going to pay, it</p> <p>25 specifically said, if you don't provide proof of</p>	<p style="text-align: right;">Page 124</p> <p>1 SUSSMAN</p> <p>2 case, that does not preclude me and it is not</p> <p>3 inappropriate for me to assert a breach of</p> <p>4 contract claim for lease payments.</p> <p>5 Q. That is not what I asked you.</p> <p>6 I asked you, would it be appropriate to</p> <p>7 offset the amount of money owed?</p> <p>8 MS. NIGRO: Objection.</p> <p>9 A. And I am saying it wouldn't be</p> <p>10 inappropriate because not that there is no</p> <p>11 validity to the setoff, but that one thing doesn't</p> <p>12 necessarily negate the other. So as an attorney</p> <p>13 asserting claim for breach of contract, that is</p> <p>14 what I should do.</p> <p>15 MR. ALTMAN: I will mark this document</p> <p>16 as Exhibit 111. This is Bates numbered NLS</p> <p>17 00766 through -- the Bates numbers are cut</p> <p>18 off.</p> <p>19 MS. NIGRO: Really --</p> <p>20 MR. ALTMAN: Your Bates numbers are off</p> <p>21 the side.</p> <p>22 MS. NIGRO: I doubt it.</p> <p>23 MR. ALTMAN: You doubt it?</p> <p>24 MS. NIGRO: The Bates numbers are put</p> <p>25 on electronically while it is being scanned.</p>

31 (Pages 121 to 124)

<p style="text-align: right;">Page 125</p> <p>1 SUSSMAN</p> <p>2 MR. ALTMAN: Off the record --</p> <p>3 MS. NIGRO: Put it all on the record.</p> <p>4 MR. ALTMAN: Do you see that --</p> <p>5 MS. NIGRO: How do I know that you have</p> <p>6 not printed it out that way? I don't know if</p> <p>7 you read the complaints in this case, but it</p> <p>8 doesn't have the same allegations that you're</p> <p>9 claiming in Galalouses.</p> <p>10 MR. ALTMAN: Here is a copy for you.</p> <p>11 (Exhibit 111, Bates numbers NLS 00766</p> <p>12 and continuing, marked for identification, as</p> <p>13 of this date.)</p> <p>14 Q. I will not ask you details about</p> <p>15 Exhibit 111. All I want to know is, are these</p> <p>16 generally screen printouts from the CCS system?</p> <p>17 MS. NIGRO: Objection.</p> <p>18 You can answer.</p> <p>19 A. I don't believe so.</p> <p>20 Q. Do you know what system these are</p> <p>21 screen printouts from?</p> <p>22 A. I think it is a legacy system called</p> <p>23 Center Point.</p> <p>24 Q. Did you have access to the Center Point</p> <p>25 system when it was in use?</p>	<p style="text-align: right;">Page 127</p> <p>1 SUSSMAN</p> <p>2 document before?</p> <p>3 A. I don't know.</p> <p>4 Q. Is the amount of money that a vendor is</p> <p>5 paid on a particular lease dependent on the credit</p> <p>6 rating of the personal guarantor?</p> <p>7 MS. NIGRO: Objection.</p> <p>8 A. You asked me that question.</p> <p>9 Q. I don't remember the answer.</p> <p>10 A. It is one of the factors to my -- based</p> <p>11 on my limited understanding of how that works.</p> <p>12 MR. ALTMAN: I will mark this document</p> <p>13 as Exhibit 113 which is Bates numbered NLS</p> <p>14 00709 which is a verification form.</p> <p>15 (Exhibit 113, Bates number NLS 00709,</p> <p>16 verification form, marked for identification,</p> <p>17 as of this date.)</p> <p>18 Q. Have you ever seen something like</p> <p>19 Exhibit 113 before?</p> <p>20 A. Yes.</p> <p>21 Q. Have you ever seen the exact copy,</p> <p>22 Exhibit 113, which is the verification form in the</p> <p>23 Melinda Serin matter?</p> <p>24 A. I don't recall, but I would think so.</p> <p>25 Q. Is that something that you would have</p>
<p style="text-align: right;">Page 126</p> <p>1 SUSSMAN</p> <p>2 A. I don't recall what access level we</p> <p>3 had. That is my answer.</p> <p>4 Q. Would you ever have gotten these</p> <p>5 printouts in the normal course of reviewing a</p> <p>6 claim?</p> <p>7 A. Not in the normal course, meaning on a</p> <p>8 regular basis.</p> <p>9 Q. Had you ever seen these kinds of</p> <p>10 printouts in any case you worked on?</p> <p>11 A. Sure.</p> <p>12 Q. Were these printouts the kind of thing</p> <p>13 you might have requested?</p> <p>14 A. Yes.</p> <p>15 Q. That is all I want to know on that.</p> <p>16 MR. ALTMAN: We will mark this document</p> <p>17 as Exhibit 112. This is Bates number NLS</p> <p>18 00710 which is entitled credit notification.</p> <p>19 (Exhibit 112, Bates number NLS 00710</p> <p>20 entitled credit notification, marked for</p> <p>21 identification, as of this date.)</p> <p>22 Q. Have you ever seen this kind of a</p> <p>23 document before?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen this particular</p>	<p style="text-align: right;">Page 128</p> <p>1 SUSSMAN</p> <p>2 routinely reviewed in your preparation for</p> <p>3 deciding whether to file a case or not?</p> <p>4 A. I or my staff, yes.</p> <p>5 Q. Can you point to me anywhere on this</p> <p>6 verification form for Melinda Serin where there is</p> <p>7 any mention whether the equipment is insured or</p> <p>8 asking for proof of insurance?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. Is that a claim asserted in Serin?</p> <p>11 Q. I am asking the questions here.</p> <p>12 Is there any mention on there?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. I don't think so.</p> <p>15 Q. Do you have any understanding of what</p> <p>16 the retail price of a Nurit 3010 terminal is?</p> <p>17 A. I have a limited understanding.</p> <p>18 Q. What is your limited understanding of</p> <p>19 what the price of that piece of equipment is?</p> <p>20 A. Actually, I take that back. It is a</p> <p>21 limited understanding. There are different</p> <p>22 models. I don't know those offhand.</p> <p>23 Q. Do you know whether, from Exhibit 112,</p> <p>24 the vendor was paid \$1439 for this lease, correct?</p> <p>25 MS. NIGRO: Objection.</p>

32 (Pages 125 to 128)

<p style="text-align: right;">Page 129</p> <p>1 SUSSMAN</p> <p>2 You can answer.</p> <p>3 A. It appears to be the case from this</p> <p>4 document.</p> <p>5 Q. That is what was paid for a Nurit 3010</p> <p>6 terminal, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any understanding of</p> <p>9 whether \$1439.02 is higher than the retail price</p> <p>10 of that piece of equipment?</p> <p>11 MS. NIGRO: Objection. The witness</p> <p>12 just testified he didn't really know what the</p> <p>13 retail price of the equipment is.</p> <p>14 A. The retail -- my -- again, it is a</p> <p>15 limited understanding, but the retail value -- the</p> <p>16 retail value of the equipment is in the range of</p> <p>17 the 1439.</p> <p>18 Q. Would it surprise you to know it is</p> <p>19 more like about five or \$600?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 A. My understanding is that that is the</p> <p>22 wholesale price.</p> <p>23 Q. You just said you didn't have an</p> <p>24 understanding and when I asked you -- but now, all</p> <p>25 of a sudden, you know that five or \$600 is the</p>	<p style="text-align: right;">Page 131</p> <p>1 SUSSMAN</p> <p>2 equipment, but I don't take legal action to</p> <p>3 repossess the equipment.</p> <p>4 The reason -- one of the reasons, it's</p> <p>5 also not cost effective to do that. You usually</p> <p>6 need to do that in the local -- notwithstanding</p> <p>7 the forum selection clause in the lease, I think</p> <p>8 it would be required to initiate an action in the</p> <p>9 guarantor or the lessee's jurisdiction to</p> <p>10 repossess the equipment and that is expensive.</p> <p>11 Q. That might be considered something</p> <p>12 related to a self help remedy, wouldn't it?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. I am not sure I understand that.</p> <p>15 Q. Do you know what a self help remedy is?</p> <p>16 A. Yes.</p> <p>17 Q. It is where you can try to do something</p> <p>18 to mitigate your damages, correct?</p> <p>19 MS. NIGRO: Objection.</p> <p>20 A. Repeat that.</p> <p>21 Q. That is something that you might do to</p> <p>22 mitigate your damages is to repossess the</p> <p>23 equipment, correct?</p> <p>24 A. Yes, but I don't think that we are in a</p> <p>25 position to repossess the equipment without legal</p>
<p style="text-align: right;">Page 130</p> <p>1 SUSSMAN</p> <p>2 wholesale price?</p> <p>3 A. I said I have a limited understanding.</p> <p>4 I am only correcting a statement you made which is</p> <p>5 that to my knowledge, and that is a limited</p> <p>6 knowledge, the price that you mentioned is a</p> <p>7 wholesale price.</p> <p>8 Q. Is it appropriate for NLS to be paying</p> <p>9 above retail price to a vendor for pieces of</p> <p>10 equipment?</p> <p>11 MS. NIGRO: Objection.</p> <p>12 A. I don't know how to answer that</p> <p>13 question.</p> <p>14 Q. As a general proposition, does NLS ever</p> <p>15 repossess equipment when it prosecutes a claim</p> <p>16 against a delinquent lessee?</p> <p>17 A. By legal action, do you mean by legal</p> <p>18 action, a re-po action?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. Why not?</p> <p>22 A. You need -- for a variety of reasons,</p> <p>23 but we do -- when I say we, my office and Northern</p> <p>24 Leasing at different stages, that is part of a</p> <p>25 demand that is made for the return of the</p>	<p style="text-align: right;">Page 132</p> <p>1 SUSSMAN</p> <p>2 -- without an order.</p> <p>3 Q. By the way, the date of these documents</p> <p>4 -- Exhibit 112 is dated August 17, 2001 and 113 is</p> <p>5 September 7, 2001, correct?</p> <p>6 A. Are you asking about Exhibit 112?</p> <p>7 Q. Yes.</p> <p>8 A. Where is the date?</p> <p>9 MS. NIGRO: On the top.</p> <p>10 A. Okay, August 17, yes.</p> <p>11 Q. Could you pull Exhibit 110 for a</p> <p>12 second?</p> <p>13 A. Yes.</p> <p>14 Q. Could you go to on page 549, number 12,</p> <p>15 remedies.</p> <p>16 A. Okay.</p> <p>17 Q. If you start reading the first sentence</p> <p>18 but you go to point B, it does say, if an event of</p> <p>19 default shall occur as described in paragraph 11,</p> <p>20 lessor may at its option at any time without</p> <p>21 notice and B, without demand or legal process</p> <p>22 enter into the premises where the equipment may be</p> <p>23 found and take possession of and remove the</p> <p>24 equipment or render it unusable without removal --</p> <p>25 without liability for such retaking?</p>

33 (Pages 129 to 132)

<p style="text-align: right;">Page 133</p> <p>1 SUSSMAN</p> <p>2 A. Okay.</p> <p>3 Q. According to lease terms, you don't</p> <p>4 need a legal process, do you?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 A. Okay.</p> <p>7 Q. Is that true?</p> <p>8 A. That is a valid proposition.</p> <p>9 Q. Why doesn't NLS ever do that?</p> <p>10 A. I think the answer -- I am speculating,</p> <p>11 but as an attorney, if they were asking me for my</p> <p>12 opinion on that, I think it still A, would be</p> <p>13 expensive to do that and B, still difficult to</p> <p>14 execute operationally and maybe for other risks</p> <p>15 and liabilities that might be associated with</p> <p>16 this.</p> <p>17 MR. ALTMAN: We will mark Bates 589 as</p> <p>18 Exhibit 114 which is a general release.</p> <p>19 (Exhibit 114, Bates 589, marked for</p> <p>20 identification, as of this date.)</p> <p>21 Q. Have you ever seen this document</p> <p>22 before?</p> <p>23 A. I believe I have.</p> <p>24 Q. Did you see this document before you</p> <p>25 filed suit against Melinda Serin?</p>	<p style="text-align: right;">Page 135</p> <p>1 SUSSMAN</p> <p>2 payments.</p> <p>3 Q. Where is that mentioned anywhere in</p> <p>4 this release?</p> <p>5 A. I don't think it is.</p> <p>6 Q. We can agree there is no mention of any</p> <p>7 such payment arrangements in this release,</p> <p>8 correct?</p> <p>9 A. Let me just read it to be sure.</p> <p>10 Correct.</p> <p>11 Q. It is not contingent on any payments,</p> <p>12 correct?</p> <p>13 A. That is a legal question, as you know,</p> <p>14 and I gave you my response.</p> <p>15 Q. Since it was not contingent upon any</p> <p>16 payments, in what way was it appropriate to file a</p> <p>17 lawsuit against Melinda Serin?</p> <p>18 MS. NIGRO: Objection.</p> <p>19 A. Disagree with that statement. You say</p> <p>20 that the general release is not contingent upon</p> <p>21 payment. I am saying that the general release was</p> <p>22 obtained and negotiated in exchange of commitment</p> <p>23 for payment.</p> <p>24 Q. But that is not noted anywhere in here?</p> <p>25 A. That is correct.</p>
<p style="text-align: right;">Page 134</p> <p>1 SUSSMAN</p> <p>2 A. No, I don't believe so.</p> <p>3 Q. Did you review the files of NLS before</p> <p>4 you filed suit against Melinda Serin?</p> <p>5 A. I or my staff would have reviewed the</p> <p>6 file of Melinda Serin.</p> <p>7 Q. In June of 2003, besides yourself, who</p> <p>8 was on your staff?</p> <p>9 A. June of the -- the date of this</p> <p>10 release. I don't remember.</p> <p>11 Q. There were no other attorneys at the</p> <p>12 time?</p> <p>13 A. Correct.</p> <p>14 Q. Given this general release, was it</p> <p>15 appropriate to file suit against Melinda Serin</p> <p>16 subsequent to this?</p> <p>17 A. Yes.</p> <p>18 Q. What is the basis of the</p> <p>19 appropriateness to file suit?</p> <p>20 A. My understanding is that Melinda Serin</p> <p>21 settled her obligations with Northern Leasing</p> <p>22 under a payment arrangement where she would be</p> <p>23 making payment installments and subsequently</p> <p>24 defaulted on that arrangement, but she had</p> <p>25 received a release prior to completing the</p>	<p style="text-align: right;">Page 136</p> <p>1 SUSSMAN</p> <p>2 Q. What is your basis for saying that?</p> <p>3 A. Saying what?</p> <p>4 Q. That it was negotiated in exchange for</p> <p>5 payment.</p> <p>6 A. My recollection of the file.</p> <p>7 Q. Is it documented anywhere?</p> <p>8 A. Yes.</p> <p>9 Q. Did you ever contact Melinda Serin</p> <p>10 subsequent to this general release not contingent</p> <p>11 on anything and say, you didn't meet the terms of</p> <p>12 the general release?</p> <p>13 A. I don't believe I made such a statement</p> <p>14 to her, a specific statement like that.</p> <p>15 Q. Did you produce the documents that show</p> <p>16 that this general release was contingent upon</p> <p>17 payment of certain moneys?</p> <p>18 A. Absolutely.</p> <p>19 Q. What is the Bates number of the</p> <p>20 document?</p> <p>21 A. I don't know.</p> <p>22 Q. When you sued Melinda Serin, did you</p> <p>23 note in the complaint that a general release had</p> <p>24 been executed but the terms of which had not been</p> <p>25 met?</p>

34 (Pages 133 to 136)

<p style="text-align: right;">Page 137</p> <p>1 SUSSMAN</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. Because it was still the case that</p> <p>5 there was a valid cause of action for a breach of</p> <p>6 contract as if the release had not been issued</p> <p>7 because a settlement agreement was -- had been</p> <p>8 broken.</p> <p>9 Q. You didn't think it was important to</p> <p>10 put that in the complaint to apprise the court</p> <p>11 that a general release had been entered that you</p> <p>12 believed was invalid?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. Counsel, do you think that it is</p> <p>15 appropriate?</p> <p>16 Q. I am not asking -- I am asking the</p> <p>17 questions.</p> <p>18 MS. NIGRO: Boys, please.</p> <p>19 A. It is a rhetorical question, but I am</p> <p>20 saying if you're asking me is it required? The</p> <p>21 answer is no, it is not required.</p> <p>22 Q. Are you familiar with the ethical</p> <p>23 cannon that requires candor upon the court?</p> <p>24 MS. NIGRO: Are you?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 139</p> <p>1 SUSSMAN</p> <p>2 determination about whether to file suit.</p> <p>3 Q. If Melinda Serin had breached the terms</p> <p>4 of the general release, you would have a breach of</p> <p>5 contract claim against Melinda Serin for breaching</p> <p>6 the terms of the general release, correct?</p> <p>7 MS. NIGRO: Objection.</p> <p>8 A. That is interesting argument and I</p> <p>9 still -- I maintain that a breach of -- that it</p> <p>10 falls back to the original position. There is no</p> <p>11 settlement, so then the breach of contract</p> <p>12 remains.</p> <p>13 Q. Despite the fact there is a signed</p> <p>14 agreement?</p> <p>15 MS. NIGRO: Objection.</p> <p>16 A. This is a general release.</p> <p>17 Q. Right.</p> <p>18 A. This general release was contingent</p> <p>19 upon payments pursuant to a settlement agreement</p> <p>20 between the parties. That agreement was broken.</p> <p>21 Q. Do you have the settlement agreement in</p> <p>22 writing?</p> <p>23 A. I don't believe -- I don't recall, but</p> <p>24 to my knowledge, there is not a written agreement</p> <p>25 between the parties setting forth the payment</p>
<p style="text-align: right;">Page 138</p> <p>1 SUSSMAN</p> <p>2 Q. You don't think that it would have been</p> <p>3 appropriate to inform the court in a lawsuit that</p> <p>4 there was a release which you believed the terms</p> <p>5 of which had not been met?</p> <p>6 MS. NIGRO: Objection.</p> <p>7 A. I think that it is entirely appropriate</p> <p>8 to have filed a complaint with significantly less</p> <p>9 information that is contained in the complaint</p> <p>10 under the CPLR as you know.</p> <p>11 Q. So you intentionally decided not to</p> <p>12 include mention of the general release in your</p> <p>13 complaint?</p> <p>14 A. No, that is not correct. I did not</p> <p>15 intentionally do that.</p> <p>16 Q. Did you know about the general release</p> <p>17 at the time you filed the complaint?</p> <p>18 A. I don't know what -- I don't recall</p> <p>19 what I knew at the time that I initiated this</p> <p>20 lawsuit.</p> <p>21 Q. Did you review the activity log for</p> <p>22 this case before you filed the lawsuit?</p> <p>23 A. I don't recall the specifics of my</p> <p>24 review of the file, but that is something that I</p> <p>25 would review in connection with making a</p>	<p style="text-align: right;">Page 140</p> <p>1 SUSSMAN</p> <p>2 terms, but I could be wrong and possibly that</p> <p>3 there is a document that sets forth the payment</p> <p>4 plan. I don't remember.</p> <p>5 Q. Getting back to my question, you</p> <p>6 decided that this document was null and void when</p> <p>7 you filed the lawsuit against Melinda Serin,</p> <p>8 correct?</p> <p>9 A. I didn't say that and again, I don't</p> <p>10 recall my specific review of this file.</p> <p>11 Q. Did you discuss the existence of a</p> <p>12 general release with anybody at Northern Leasing?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. Can you clarify the time frame?</p> <p>15 Q. Before you filed the lawsuit against</p> <p>16 Melinda, did you have a conversation with anybody</p> <p>17 at Northern Leasing concerning this general</p> <p>18 release?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you have any notes on your review of</p> <p>21 the Melinda Serin file?</p> <p>22 A. Not anything other than what has been</p> <p>23 produced.</p> <p>24 Q. What concerning Melinda Serin is</p> <p>25 contained within the privileged documents?</p>

35 (Pages 137 to 140)

<p style="text-align: right;">Page 141</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: Objection.</p> <p>3 Q. Are there any documents concerning</p> <p>4 Melinda Serin or Melinda Serin's case in the</p> <p>5 privileged documents?</p> <p>6 A. What is in -- privilege log -- what is</p> <p>7 set forth in the privilege log, that is the</p> <p>8 description that has been provided to counsel.</p> <p>9 Q. I am just asking if you have any</p> <p>10 recollection of whether there are documents</p> <p>11 concerning Melinda Serin in the documents that you</p> <p>12 asserted privilege on.</p> <p>13 A. Yes.</p> <p>14 Q. I am curious. You say you don't</p> <p>15 remember anything -- you don't remember specific</p> <p>16 details of Melinda Serin, but yet you remember or</p> <p>17 you know that she didn't -- that this agreement</p> <p>18 you claim was violated?</p> <p>19 MS. NIGRO: Objection.</p> <p>20 MR. ALTMAN: Strike that. That was a</p> <p>21 terrible question.</p> <p>22 MS. NIGRO: You're just</p> <p>23 mischaracterizing his testimony.</p> <p>24 Q. Before you filed the lawsuit, had you</p> <p>25 analyzed this contract -- general release to see</p>	<p style="text-align: right;">Page 143</p> <p>1 SUSSMAN</p> <p>2 if it was my own review together with a</p> <p>3 conversation. I don't remember.</p> <p>4 Q. You said the settlement agreement</p> <p>5 wasn't in writing.</p> <p>6 MS. NIGRO: Objection.</p> <p>7 Q. How would you know what the terms were?</p> <p>8 MS. NIGRO: Objection.</p> <p>9 Mischaracterizes his testimony.</p> <p>10 MR. ALTMAN: Strike that.</p> <p>11 Q. I think you said before there was a</p> <p>12 settlement agreement that in exchange for a</p> <p>13 general release, Ms. Serin would pay some money?</p> <p>14 A. Correct.</p> <p>15 Q. I asked you was that settlement</p> <p>16 agreement in writing and you said no, it wasn't?</p> <p>17 A. Correct -- not correct.</p> <p>18 MS. NIGRO: I think he said it might</p> <p>19 not have been in writing.</p> <p>20 A. I don't know and it is possible it is</p> <p>21 in writing.</p> <p>22 Q. If it is writing, where is it?</p> <p>23 A. In documents that have been produced to</p> <p>24 counsel, to you.</p> <p>25 Q. On a break, I will see if I can find</p>
<p style="text-align: right;">Page 142</p> <p>1 SUSSMAN</p> <p>2 if the terms had been satisfied?</p> <p>3 A. Did you ask me did I? Did I do that?</p> <p>4 Q. Yes.</p> <p>5 A. I don't recall.</p> <p>6 Q. If it was in NLS's lease system, you</p> <p>7 would have had access to it, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Are you saying that the terms of the</p> <p>10 general release weren't met based upon an</p> <p>11 after-the-fact review of the Serin file or did you</p> <p>12 know about it before you filed the lawsuit?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. I don't know.</p> <p>15 I have knowledge about what I have</p> <p>16 testified to regarding this case, but I don't -- I</p> <p>17 can't sit here and tell you what I knew and what</p> <p>18 specifically -- or I don't have a specific</p> <p>19 recollection about the review of this particular</p> <p>20 file prior to initiating the lawsuit. That is the</p> <p>21 best I can do.</p> <p>22 Q. Who is it that told you the terms of</p> <p>23 this general release were not met?</p> <p>24 MS. NIGRO: Objection.</p> <p>25 A. I don't remember if it was anybody or</p>	<p style="text-align: right;">Page 144</p> <p>1 SUSSMAN</p> <p>2 that quickly looking through your documents.</p> <p>3 Was that settlement agreement signed by</p> <p>4 Ms. Serin, by the way?</p> <p>5 A. No, I don't think so.</p> <p>6 Q. So a settlement that is not signed by</p> <p>7 Ms. Serin you say is binding upon Ms. Serin?</p> <p>8 MS. NIGRO: Objection.</p> <p>9 Q. Excuse me. This is a general release.</p> <p>10 This is binding on your client. You don't need</p> <p>11 both parties to sign a general release, correct?</p> <p>12 A. Correct, but that notwithstanding, a</p> <p>13 general release is always -- if there is no</p> <p>14 consideration, it is not binding. The</p> <p>15 consideration for the general release was</p> <p>16 settlement payments, but you asked an earlier</p> <p>17 question; that the settlement between Serin and</p> <p>18 Northern Leasing, to the extent that it is in</p> <p>19 writing -- I am sorry -- would have been produced.</p> <p>20 MR. ALTMAN: We will mark Exhibit 115.</p> <p>21 (Exhibit 115, Bates number 584, May 2,</p> <p>22 2005 letter from Northern Leasing to Melinda</p> <p>23 Serin, marked for identification, as of this</p> <p>24 date.)</p> <p>25 MR. ALTMAN: Exhibit 115, Bates number</p>

36 (Pages 141 to 144)

<p style="text-align: right;">Page 145</p> <p>1 SUSSMAN</p> <p>2 584, May 2, 2005 letter from Northern Leasing</p> <p>3 to Melinda Serin.</p> <p>4 Q. Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. The first sentence is -- are you</p> <p>7 familiar with the fair credit collection act?</p> <p>8 A. No. I think it is -- I know what you</p> <p>9 mean. Fair credit reporting act?</p> <p>10 Q. No. There are several different ones.</p> <p>11 A. The CRA?</p> <p>12 MS. NIGRO: Back up. What was the</p> <p>13 question?</p> <p>14 Q. Fair credit collection act, maybe that</p> <p>15 is the wrong term, but there is an act that</p> <p>16 defines the responsibilities of debt collectors,</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Are you familiar with that act?</p> <p>20 A. I have that understanding.</p> <p>21 Q. You collect debts?</p> <p>22 A. Correct.</p> <p>23 Q. It is important that you're familiar</p> <p>24 with that statute, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 147</p> <p>1 SUSSMAN</p> <p>2 collection practices act.</p> <p>3 That requires that a validation notice</p> <p>4 be set forth in a letter. It does not pertain to</p> <p>5 this particular account.</p> <p>6 Q. Why is that?</p> <p>7 A. Because it is not debt as it is defined</p> <p>8 under the FDCPA.</p> <p>9 Q. The language says, this account has</p> <p>10 been referred to this office for collection of</p> <p>11 your, you, individual outstanding balance,</p> <p>12 correct? It is addressed to Melinda Serin.</p> <p>13 MS. NIGRO: It is addressed to -- the</p> <p>14 document is addressed to Jim Cameron Garage</p> <p>15 Doors, Melinda J. Serin.</p> <p>16 Q. It is your position that a validation</p> <p>17 clause was not required in this letter; is that</p> <p>18 your position?</p> <p>19 A. Correct. Notwithstanding that, there</p> <p>20 is -- there are statements in this letter inviting</p> <p>21 the recipient to contact the lessor leasing to</p> <p>22 discuss --</p> <p>23 Q. If they dispute the debt -- sorry.</p> <p>24 There is no pending question.</p> <p>25 MR. ALTMAN: I will mark this document</p>
<p style="text-align: right;">Page 146</p> <p>1 SUSSMAN</p> <p>2 Q. The letter dated May 2, 2005, says</p> <p>3 outstanding balance of \$1,232.66?</p> <p>4 A. Yes.</p> <p>5 Q. That is a demand for payment, correct?</p> <p>6 A. Correct.</p> <p>7 Q. It says, the above account has been</p> <p>8 referred to our office for collection of your</p> <p>9 outstanding balance, correct?</p> <p>10 A. Correct.</p> <p>11 Q. Do you know what a validation clause</p> <p>12 is?</p> <p>13 A. Can you tell me what it is?</p> <p>14 Q. Validation clause is language to the</p> <p>15 effect telling an individual they have a right to</p> <p>16 dispute the debt if they don't believe it is</p> <p>17 accurate. Are you familiar with that term?</p> <p>18 A. Tell me more.</p> <p>19 Q. Are you familiar with what a validation</p> <p>20 clause is?</p> <p>21 A. I am.</p> <p>22 Q. Is there a validation clause in this</p> <p>23 letter?</p> <p>24 A. Well, a validation clause that you were</p> <p>25 referring to is under the FDCPA, fair debt</p>	<p style="text-align: right;">Page 148</p> <p>1 SUSSMAN</p> <p>2 as 116, Bates number 592 through 596.</p> <p>3 (Exhibit 116, Bates number 592 through</p> <p>4 596, marked for identification, as of this</p> <p>5 date.)</p> <p>6 Q. This is a letter from you to Melinda</p> <p>7 Serin, correct?</p> <p>8 A. Correct.</p> <p>9 Q. The letterhead at the top says the Law</p> <p>10 Offices of Joseph Sussman, correct?</p> <p>11 A. Correct.</p> <p>12 Q. By the way, the last letter, Exhibit</p> <p>13 115, was Northern Leasing, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Exhibit 116, that is addressed to</p> <p>16 Melinda Serin, correct?</p> <p>17 A. Correct.</p> <p>18 Q. It is not addressed to Jim Cameron</p> <p>19 Garage Doors?</p> <p>20 A. Correct.</p> <p>21 Q. Is there a validation clause anywhere</p> <p>22 in this letter?</p> <p>23 A. No.</p> <p>24 Q. You signed this letter?</p> <p>25 A. Yes.</p>

37 (Pages 145 to 148)

<p style="text-align: right;">Page 149</p> <p>1 SUSSMAN</p> <p>2 Q. You notice that it is dated May 17,</p> <p>3 2005?</p> <p>4 A. Yes.</p> <p>5 Q. The letter before is May 2, 2005?</p> <p>6 A. Correct.</p> <p>7 Q. The letter before says the outstanding</p> <p>8 balance is \$1,238.60?</p> <p>9 A. Correct.</p> <p>10 Q. Your letter just 15 days later now has</p> <p>11 the balance of \$2,478?</p> <p>12 A. Correct.</p> <p>13 Q. Where did the other 1200 and some odd</p> <p>14 dollars come from?</p> <p>15 A. The 2,478 represents the balance of</p> <p>16 lease payments under the --</p> <p>17 Q. What was the \$1,238.60 listed as the</p> <p>18 outstanding balance.</p> <p>19 A. I can venture a guess, but that is --</p> <p>20 MS. NIGRO: Objection. He is not the</p> <p>21 author of this letter.</p> <p>22 Q. Before you filed suit, you would have</p> <p>23 reviewed this letter, correct?</p> <p>24 A. Not necessarily.</p> <p>25 MS. NIGRO: You're talking about 115</p>	<p style="text-align: right;">Page 151</p> <p>1 SUSSMAN</p> <p>2 Q. The 1238.</p> <p>3 A. I was not aware of that amount in what</p> <p>4 context?</p> <p>5 Q. Well, I am still trying to understand</p> <p>6 why 15 days after this letter was sent out, you</p> <p>7 sent out a demand for 2,478.</p> <p>8 A. I explained I sent out a demand for the</p> <p>9 balance of lease payments.</p> <p>10 Q. But I think you said that the 1238 --</p> <p>11 your guess is that the 1238 was the amount of</p> <p>12 money that Serin was supposed to pay for the</p> <p>13 unconditional release?</p> <p>14 MS. NIGRO: Objection. It was a guess.</p> <p>15 It is a guess.</p> <p>16 Q. If that were the case, why isn't that</p> <p>17 the amount of money that was owed?</p> <p>18 A. If that was the case, then why is that</p> <p>19 the amount of money owed meaning in my complaint</p> <p>20 -- my demand letter?</p> <p>21 Q. Right. Why didn't you demand the same</p> <p>22 \$1,238?</p> <p>23 A. I demanded the amount of money owed</p> <p>24 under the lease.</p> <p>25 MR. ALTMAN: We will mark this document</p>
<p style="text-align: right;">Page 150</p> <p>1 SUSSMAN</p> <p>2 now?</p> <p>3 MR. ALTMAN: Yes.</p> <p>4 A. Not necessarily.</p> <p>5 Q. You wouldn't have reviewed a demand for</p> <p>6 payment?</p> <p>7 A. Not necessarily.</p> <p>8 Q. You have no explanation of the</p> <p>9 difference between the two amounts?</p> <p>10 A. I have, but it would be a guess.</p> <p>11 Q. What is your guess?</p> <p>12 MS. NIGRO: Objection.</p> <p>13 You can answer.</p> <p>14 A. The number in Benita Burton's letter</p> <p>15 represents the balance of payment under her</p> <p>16 agreement on behalf of Northern Leasing that she</p> <p>17 negotiated with Serin.</p> <p>18 I don't know if that number is the</p> <p>19 balance of settlement payments or the balance of</p> <p>20 payments crediting her for payments made. I don't</p> <p>21 know at what juncture it was made, but it has</p> <p>22 something to do with the fact that she had made an</p> <p>23 agreement with Northern Leasing.</p> <p>24 Q. You were not aware of that amount?</p> <p>25 A. I was not aware of what amount?</p>	<p style="text-align: right;">Page 152</p> <p>1 SUSSMAN</p> <p>2 marked as Exhibit 117. It is Bates NLS 00552.</p> <p>3 (Exhibit 117, Bates NLS 00552, marked</p> <p>4 for identification, as of this date.)</p> <p>5 Q. This is a charge back request</p> <p>6 terminating a lease.</p> <p>7 MS. NIGRO: It is a document entitled</p> <p>8 charge back --</p> <p>9 MR. ALTMAN: Yeah, yeah.</p> <p>10 Q. Have you ever seen this document</p> <p>11 before?</p> <p>12 A. I don't remember specifically.</p> <p>13 Q. You produced a number of documents in</p> <p>14 this case; we talked about that earlier today.</p> <p>15 A. Correct.</p> <p>16 Q. Is it a fair assumption that everything</p> <p>17 you produced to us you reviewed at some point in</p> <p>18 time?</p> <p>19 A. Yes.</p> <p>20 MR. ALTMAN: We will mark as Exhibit</p> <p>21 118, a document Bates stamped NLS 633 through</p> <p>22 639 which are the activity logs for Melinda</p> <p>23 Serin and the payment history for Melinda</p> <p>24 which I combined into one exhibit. It may</p> <p>25 have existed as two separate documents.</p>

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<p style="text-align: right;">Page 153</p> <p>1 SUSSMAN</p> <p>2 (Exhibit 118, document Bates stamped</p> <p>3 NLS 633 through 639, marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. You had access to this activity log,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. You would have reviewed, if not a</p> <p>9 printout of the activity log, the activity log</p> <p>10 within the leasing system, correct?</p> <p>11 A. Correct. It depends when the review</p> <p>12 would have taken place.</p> <p>13 Q. Before the lawsuit was filed when you</p> <p>14 did the review which was sometime in 2005, I</p> <p>15 believe.</p> <p>16 A. Right. So I or my staff would have</p> <p>17 made a review of these comments, correct.</p> <p>18 Q. Do you see on Bates 635, on 6/23/2003,</p> <p>19 it says -- 6/24/2003, it says mailed release to</p> <p>20 PG, personal guarantor?</p> <p>21 A. Yes.</p> <p>22 Q. That is Melinda Serin?</p> <p>23 A. Yes.</p> <p>24 Q. You were aware that a release had been</p> <p>25 sent to Melinda Serin before you filed lawsuit,</p>	<p style="text-align: right;">Page 155</p> <p>1 SUSSMAN</p> <p>2 Q. Would you go to the last two pages --</p> <p>3 A. The last.</p> <p>4 Q. The payment history.</p> <p>5 MS. NIGRO: 638 and 639.</p> <p>6 Q. We have a column there for -- would you</p> <p>7 have reviewed the payment history as part of your</p> <p>8 review?</p> <p>9 A. Not necessarily.</p> <p>10 Q. The column that is other RES billed,</p> <p>11 what is that?</p> <p>12 A. Well, I --</p> <p>13 Q. Is that the lost damage waivers?</p> <p>14 A. It looks like it, but I am not sure</p> <p>15 what the words -- what it stands for. The amount</p> <p>16 looks like lost damage waivers.</p> <p>17 Q. The next page on 8/12/2002, there is a</p> <p>18 property tax charge of \$13.80, correct?</p> <p>19 MS. NIGRO: Where?</p> <p>20 Q. The last page, 8/12/2002, there is a</p> <p>21 property tax charge of \$13.80, correct?</p> <p>22 A. Yes.</p> <p>23 Q. There is a property tax fee of \$20,</p> <p>24 correct?</p> <p>25 A. Under the charge column.</p>
<p style="text-align: right;">Page 154</p> <p>1 SUSSMAN</p> <p>2 correct?</p> <p>3 A. I can't answer that question.</p> <p>4 I testified earlier that I don't -- I</p> <p>5 can't testify to my -- to what -- to my review at</p> <p>6 the time. I don't remember.</p> <p>7 Q. Even if you had remembered, your</p> <p>8 opinion was the release was invalid anyway?</p> <p>9 MS. NIGRO: Objection. That wasn't his</p> <p>10 testimony.</p> <p>11 Q. Is the release valid or not?</p> <p>12 A. The release is contingent upon payments</p> <p>13 being made. Those payments weren't made. So it</p> <p>14 falls back to the original rights of the parties</p> <p>15 under the agreement.</p> <p>16 Q. You're staying the general release was</p> <p>17 not valid?</p> <p>18 A. Not binding. I don't know if there is</p> <p>19 a difference in this terminology. I am saying the</p> <p>20 appropriate way to proceed to enforce rights of</p> <p>21 the parties is to proceed under the lease, not</p> <p>22 under -- under the lease and not the release.</p> <p>23 MS. NIGRO: Not the leaseback.</p> <p>24 Sorry for the joke.</p> <p>25 MR. ALTMAN: That is okay.</p>	<p style="text-align: right;">Page 156</p> <p>1 SUSSMAN</p> <p>2 Q. Under the charges column, Ms. Serin was</p> <p>3 charged \$20 for a property tax fee. I don't know</p> <p>4 if that is correct. I don't know if she was</p> <p>5 charged, if it was communicated to her, if an</p> <p>6 attempt was made to collect it, but it appears</p> <p>7 under the charges column?</p> <p>8 MR. ALTMAN: Let's take a break.</p> <p>9 THE VIDEOGRAPHER: The time is now 3:02</p> <p>10 p.m. We are off the record.</p> <p>11 (Recess taken.)</p> <p>12 THE VIDEOGRAPHER: The time is now 3:18</p> <p>13 p.m. We are back on the record.</p> <p>14 Q. Who told you to file the lawsuit</p> <p>15 against Melinda Serin?</p> <p>16 A. I don't think -- again, I don't</p> <p>17 recollect very well the specifics of my review and</p> <p>18 even how the accounts were forwarded, but in 2005,</p> <p>19 I am guessing now though, the accounts -- we</p> <p>20 printed out demand letters and complaints for</p> <p>21 leases that were ready -- that were forwarded --</p> <p>22 in other words, it wasn't -- I don't think it was</p> <p>23 verbally communicated to me to go ahead and sue on</p> <p>24 the Melinda Serin file, but I don't remember.</p> <p>25 Q. Were you aware before you filed the</p>

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<p style="text-align: right;">Page 157</p> <p>1 SUSSMAN</p> <p>2 lawsuit that there was a forgery claim, correct?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 You can answer.</p> <p>5 A. I don't remember what my knowledge was</p> <p>6 of -- during the review or prior to initiating</p> <p>7 lawsuit.</p> <p>8 Q. When did you become aware that there</p> <p>9 was a forgery claim?</p> <p>10 A. I recall -- affirm -- I know that I was</p> <p>11 aware of the date that she appeared in the civil</p> <p>12 court for a pre-arb. On that date or in the weeks</p> <p>13 that ensued, I certainly would have become aware</p> <p>14 of it. I recall becoming aware of it is what I</p> <p>15 mean to say.</p> <p>16 Q. How did you investigate Melinda Serin's</p> <p>17 forgery claim?</p> <p>18 MS. NIGRO: Objection.</p> <p>19 A. I don't know if I investigated the</p> <p>20 forgery claim the way I would have investigated it</p> <p>21 prior to initiating the lawsuit. It was in a</p> <p>22 different context at that point.</p> <p>23 Q. Is it your testimony that prior to</p> <p>24 filing the lawsuit, you had no idea that Melinda</p> <p>25 Serin had claimed that the documents had been</p>	<p style="text-align: right;">Page 159</p> <p>1 SUSSMAN</p> <p>2 printout.</p> <p>3 Do you understand what I mean?</p> <p>4 Q. How would you have decided what to have</p> <p>5 reviewed in this document and what not to have</p> <p>6 reviewed?</p> <p>7 A. I stated what the criteria -- some of</p> <p>8 the general criteria are or is that I utilize in</p> <p>9 reviewing a file.</p> <p>10 A forgery claim is something that I</p> <p>11 would have expected to have been brought to my</p> <p>12 attention by my staff or if I am reviewing it, it</p> <p>13 was something that I would note and look into</p> <p>14 further.</p> <p>15 Q. Would the statement debit account for</p> <p>16 final payment of 248.20 which settles account in</p> <p>17 full be relevant?</p> <p>18 MS. NIGRO: Where are you?</p> <p>19 MR. ALTMAN: I am asking a general</p> <p>20 proposition.</p> <p>21 MS. NIGRO: Now you're reading from the</p> <p>22 document. Where are you reading from?</p> <p>23 MR. ALTMAN: I am asking a general</p> <p>24 proposition.</p> <p>25 MS. NIGRO: But tell me where -- why</p>
<p style="text-align: right;">Page 158</p> <p>1 SUSSMAN</p> <p>2 forged?</p> <p>3 A. That is not my testimony.</p> <p>4 Q. Did you know or didn't you know?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 A. I don't remember.</p> <p>7 Q. You don't have notes?</p> <p>8 A. I testified earlier that I used the CCS</p> <p>9 system as a litigation management tool. To the</p> <p>10 extent that there were notes, it would have been</p> <p>11 recorded in that system.</p> <p>12 Q. Is it a fair statement that any notes</p> <p>13 within Melinda Serin's record was information you</p> <p>14 knew at that point in time? You may not remember</p> <p>15 it now, but you knew at that point in time?</p> <p>16 MS. NIGRO: Objection. You can answer.</p> <p>17 A. Can you just repeat it?</p> <p>18 Q. You would have read the entire activity</p> <p>19 file that existed before filing lawsuit, correct?</p> <p>20 A. Not exactly that way. I explained the</p> <p>21 review process.</p> <p>22 The review process does not entail</p> <p>23 reading every single word on this printout; it</p> <p>24 doesn't, but it would in all likelihood have</p> <p>25 required a review of information contained in this</p>	<p style="text-align: right;">Page 160</p> <p>1 SUSSMAN</p> <p>2 not?</p> <p>3 MR. ALTMAN: I will. Fine. On 635.</p> <p>4 MS. NIGRO: Okay.</p> <p>5 Q. Is that something that would be</p> <p>6 important when you reviewed an account?</p> <p>7 A. Yes.</p> <p>8 Q. Mailed release to PG; is that something</p> <p>9 that would have been important?</p> <p>10 A. Absolutely.</p> <p>11 Q. Statements that she didn't sign the</p> <p>12 lease, would that be important to your review or</p> <p>13 that she says she didn't sign the lease?</p> <p>14 A. Yes.</p> <p>15 Q. I am not saying you would believe it,</p> <p>16 but you would certainly review that information,</p> <p>17 correct?</p> <p>18 A. Sure.</p> <p>19 Q. We are going to shift gears now and</p> <p>20 talk about somebody sells. Judson Russ, Rapid</p> <p>21 Cash. Tell me what you recall about the Rapid</p> <p>22 Cash.</p> <p>23 A. I recall Judson Russ in a general</p> <p>24 manner and some specifics, but if you continue, I</p> <p>25 will be happy to tell you what I know and what I</p>

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<p style="text-align: right;">Page 161</p> <p>1 SUSSMAN</p> <p>2 remember and what I don't.</p> <p>3 Q. Did you review all the information that</p> <p>4 Judson Russ filed before you filed the lawsuit</p> <p>5 against Judson Russ?</p> <p>6 A. I don't think I reviewed all the</p> <p>7 information. I reviewed the information that I</p> <p>8 thought was relevant for my review. So yes, that</p> <p>9 would have been something that would have been</p> <p>10 reviewed prior to suing.</p> <p>11 Q. What information did you review in the</p> <p>12 Judson Russ file before you filed a lawsuit?</p> <p>13 A. I don't remember specifically how that</p> <p>14 review went.</p> <p>15 Q. I will hand you what has been marked as</p> <p>16 Exhibit 119.</p> <p>17 (Exhibit 119, Bates numbers 839 through</p> <p>18 842, marked for identification, as of this</p> <p>19 date.)</p> <p>20 MR. ALTMAN: Exhibit 119 is Bates</p> <p>21 number 839 through 842. This is the Northern</p> <p>22 Leasing Systems for equipment file lease for</p> <p>23 219169. The only reason I am that specific is</p> <p>24 because there is a number of leases associated</p> <p>25 with Mr. Russ.</p>	<p style="text-align: right;">Page 163</p> <p>1 SUSSMAN</p> <p>2 demonstrating that they are aware that that page</p> <p>3 existed?</p> <p>4 A. I am familiar with spaces on additional</p> <p>5 pages for initials.</p> <p>6 Q. That is not done on your lease</p> <p>7 agreement here, correct?</p> <p>8 A. No, it doesn't look like it.</p> <p>9 Q. It wouldn't be difficult to print a</p> <p>10 line for an initial on the bottom of the lease?</p> <p>11 A. To print it? No.</p> <p>12 Q. Would that have made it more clear that</p> <p>13 an individual had seen all the pages if they had</p> <p>14 initialed each page?</p> <p>15 MS. NIGRO: Objection.</p> <p>16 A. Can you repeat the question?</p> <p>17 MS. NIGRO: You're asking his personal</p> <p>18 opinion.</p> <p>19 Q. As a lawyer, would it have been clearer</p> <p>20 that a person had read each of the pages of the</p> <p>21 lease if they had initialed somewhere on each of</p> <p>22 the pages?</p> <p>23 A. If you mean to ask if each page would</p> <p>24 have been initialed by the signer, would that be a</p> <p>25 very good indication that he or she has read all</p>
<p style="text-align: right;">Page 162</p> <p>1 SUSSMAN</p> <p>2 Once again, I think we have an issue</p> <p>3 that with this copy of the lease may have cut</p> <p>4 some information off the bottom.</p> <p>5 I am willing to stipulate that --</p> <p>6 MS. NIGRO: You're not going to ask him</p> <p>7 any questions that would be affected by it?</p> <p>8 MR. ALTMAN: Yes. There are better</p> <p>9 copies of the lease. This happens to be the</p> <p>10 one that I got.</p> <p>11 Q. By the way, as a general proposition,</p> <p>12 there is no spot, even though it is not here,</p> <p>13 there is no spot in the page 1 of X for a</p> <p>14 signature from a lessee, correct?</p> <p>15 A. Sorry.</p> <p>16 Q. Even though it is not here, the page 1</p> <p>17 of 4 that you just mentioned, there isn't any line</p> <p>18 or something next to it designed for a lessee to</p> <p>19 initial that he has seen that page, correct?</p> <p>20 A. That he has seen --</p> <p>21 Q. That he has seen page 1, 2, 3 or 4 --</p> <p>22 MR. ALTMAN: Strike that.</p> <p>23 Q. Are you familiar that in some documents</p> <p>24 that -- agreements that are multiple pages, space</p> <p>25 is put at the bottom for the signer's initials</p>	<p style="text-align: right;">Page 164</p> <p>1 SUSSMAN</p> <p>2 the pages, the answer is yes.</p> <p>3 Q. Okay. Is there some reason why</p> <p>4 Northern Leasing has chosen not to?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 Q. You're aware that many of the claims</p> <p>7 against Northern Leasing are involved with the</p> <p>8 fact that lessees are not aware that there is more</p> <p>9 than one page to the lease, correct?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 A. I am aware of Mr. Chittur's claim that</p> <p>12 that is a claim of many lessees.</p> <p>13 Q. So independent of Mr. Chittur, you're</p> <p>14 not aware of other individuals who have claimed</p> <p>15 that they only saw one page of the lease?</p> <p>16 A. It is a very rare occurrence that that</p> <p>17 claim has been made, other than clients of</p> <p>18 Mr. Chittur.</p> <p>19 Q. When you say very rare, how rare?</p> <p>20 A. Very rare.</p> <p>21 Q. Do you know what the term fair market</p> <p>22 value means?</p> <p>23 MS. NIGRO: Objection. Relevance.</p> <p>24 A. I remember fair market value from law</p> <p>25 school. I don't know if I understood it well</p>

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<p style="text-align: right;">Page 165</p> <p>1 SUSSMAN</p> <p>2 then. I have a very limited understanding of what</p> <p>3 -- if it is a legal term, but -- so I have some</p> <p>4 understanding of it.</p> <p>5 Q. Do you have any understanding of the</p> <p>6 tax implications of the difference between a lease</p> <p>7 that is, let's say, a dollar buyout versus a fair</p> <p>8 market value lease?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. I know it has to do with depreciation</p> <p>11 and things like that, but there is more.</p> <p>12 Q. We don't have to go into the same</p> <p>13 detail we went into with Melinda Serin, but under</p> <p>14 the scheduled payments, there is no mention here</p> <p>15 of any tax filing fees?</p> <p>16 A. There is a reference to plus applicable</p> <p>17 taxes on scheduled payments in bold.</p> <p>18 Q. But there is no reference to plus fees,</p> <p>19 handling fees, tax preparation fees or any such</p> <p>20 fee, correct?</p> <p>21 MS. NIGRO: That specific language, is</p> <p>22 that your question?</p> <p>23 A. If I were signing the lease that stated</p> <p>24 plus applicable taxes and I was concerned about</p> <p>25 what that meant, I would inquire further.</p>	<p style="text-align: right;">Page 167</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: Do you know one way or the</p> <p>3 other?</p> <p>4 A. I don't know.</p> <p>5 Q. Is there any mention here on lost</p> <p>6 damage waiver of insurance under scheduled</p> <p>7 payments?</p> <p>8 A. Doesn't appear to be.</p> <p>9 MR. ALTMAN: I will hand you what we</p> <p>10 will mark as Exhibit 120. It is a Bates</p> <p>11 number 849.</p> <p>12 (Exhibit 120, Bates number 849, marked</p> <p>13 for identification, as of this date.)</p> <p>14 MR. ALTMAN: I have spoken with</p> <p>15 counsel. There was some dialogue earlier</p> <p>16 about me asking the witness about some</p> <p>17 questions about how he has been paid and</p> <p>18 defense counsel raised a privilege objection.</p> <p>19 MS. NIGRO: Among others.</p> <p>20 MR. ALTMAN: We have agreed that</p> <p>21 without me having to ask every question that I</p> <p>22 might ask to only have her object, that I have</p> <p>23 sufficiently preserved the issue for further</p> <p>24 follow up with the court if necessary.</p> <p>25 MS. NIGRO: That is true, but only to</p>
<p style="text-align: right;">Page 166</p> <p>1 SUSSMAN</p> <p>2 Q. Taxes means fees to Northern Leasing?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 A. Taxes means what taxes means. I would</p> <p>5 like to know what they mean by plus applicable</p> <p>6 taxes.</p> <p>7 Q. Is a fee to Northern Leasing for filing</p> <p>8 a form a tax?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. Sorry.</p> <p>11 Q. Is a fee paid to Northern Leasing</p> <p>12 solely for filing a tax -- for preparing a tax</p> <p>13 form a tax?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 A. I don't know.</p> <p>16 Q. You don't know if that is a tax?</p> <p>17 A. I don't know if a filing -- if a fee is</p> <p>18 a tax?</p> <p>19 Q. No. A fee that NLS charges customers</p> <p>20 for filling out paperwork, is that a tax?</p> <p>21 MS. NIGRO: You're asking him for a</p> <p>22 legal definition of a tax?</p> <p>23 MR. ALTMAN: Right. He is a lawyer.</p> <p>24 MS. NIGRO: So am I and I don't know --</p> <p>25 Q. Is that a tax?</p>	<p style="text-align: right;">Page 168</p> <p>1 SUSSMAN</p> <p>2 the extent it fits within the seven hours</p> <p>3 allowed for this witness, so I would reserve</p> <p>4 time if I were you.</p> <p>5 MR. ALTMAN: I don't know if I need to</p> <p>6 do that.</p> <p>7 MS. NIGRO: No, you do.</p> <p>8 MR. ALTMAN: We will see.</p> <p>9 MS. NIGRO: You do. I am only</p> <p>10 preserving it to the extent that it falls</p> <p>11 within the seven hours. So you do in terms of</p> <p>12 the stip.</p> <p>13 MR. ALTMAN: I will ask for more time.</p> <p>14 MS. NIGRO: You won't get it.</p> <p>15 MR. ALTMAN: We will see.</p> <p>16 Q. This is a verification form for Mr. --</p> <p>17 for Rapid Cash, correct?</p> <p>18 A. Correct.</p> <p>19 Q. The piece of equipment is the IVI CTX</p> <p>20 3000?</p> <p>21 A. Correct.</p> <p>22 Q. Do you have any understanding what the</p> <p>23 retail cost of that piece of equipment is?</p> <p>24 A. No.</p> <p>25 Q. This verification form shows that Mr.</p>

42 (Pages 165 to 168)

<p style="text-align: right;">Page 169</p> <p>1 SUSSMAN</p> <p>2 Russ did not actually verify the lease, correct?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 A. I don't know if there is enough</p> <p>5 information here to affirmatively say that is</p> <p>6 correct.</p> <p>7 Q. At the bottom do you see it says</p> <p>8 verified lease with Daniel Magyari?</p> <p>9 A. Yes.</p> <p>10 Q. That is not Judson Russ?</p> <p>11 A. Correct.</p> <p>12 Q. This individual didn't speak to Judson</p> <p>13 Russ, correct?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 A. It is correct that this document does</p> <p>16 not expressly refer to a conversation with Mr.</p> <p>17 Russ. That doesn't mean -- I don't know. It is</p> <p>18 possible that they spoke with Mr. Russ as well,</p> <p>19 but this document shows that there was a</p> <p>20 conversation with Mr. Magyari.</p> <p>21 Q. There is no conversation with Mr. Russ</p> <p>22 reflected on this document, correct?</p> <p>23 A. Correct.</p> <p>24 Q. If I represented to you -- there are</p> <p>25 four verification forms associated with Mr. Russ,</p>	<p style="text-align: right;">Page 171</p> <p>1 SUSSMAN</p> <p>2 Q. Was this lease signed personally</p> <p>3 directly by Judson Russ?</p> <p>4 A. I wouldn't know.</p> <p>5 Q. Are you aware that Mr. Russ claimed and</p> <p>6 provided proof to Northern Leasing that he was not</p> <p>7 in the country the day this lease was signed?</p> <p>8 MS. NIGRO: Objection.</p> <p>9 You can answer.</p> <p>10 A. I am aware.</p> <p>11 Q. Do you have any reason to question,</p> <p>12 based upon the proof you were provided, that Mr.</p> <p>13 Russ was outside of the country?</p> <p>14 A. I have no -- do I have any reason to --</p> <p>15 Q. Do you have any basis for disputing</p> <p>16 that his passport, visas and ATM receipts are</p> <p>17 forged and not accurate?</p> <p>18 MS. NIGRO: Objection.</p> <p>19 A. I don't have -- I have never received</p> <p>20 the original documents, so to --</p> <p>21 MS. NIGRO: For the record, we called</p> <p>22 for his passports. They were never produced.</p> <p>23 We called for the machines and they were never</p> <p>24 produced.</p> <p>25 MR. STRUTINSKIY: We notified you the</p>
<p style="text-align: right;">Page 170</p> <p>1 SUSSMAN</p> <p>2 correct?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 MR. ALTMAN: Strike that.</p> <p>5 Q. There are four leases?</p> <p>6 A. Yes.</p> <p>7 Q. There would have been four verification</p> <p>8 forms?</p> <p>9 A. Likely.</p> <p>10 Q. Do you have any reason to believe that</p> <p>11 the verification is not the same for all four of</p> <p>12 them? I just don't want no mark every single one</p> <p>13 of them.</p> <p>14 Is it your understanding that the</p> <p>15 verifications were all done with Mr. Magyari?</p> <p>16 A. I don't know.</p> <p>17 MS. NIGRO: You would have to show him.</p> <p>18 Q. By the way, going back to Exhibit 119</p> <p>19 which is the lease, what is the date of Exhibit</p> <p>20 119, the date the lease was signed?</p> <p>21 A. By Judson Russ or -- what is the date</p> <p>22 on the lease?</p> <p>23 Q. What is the date on the lease that</p> <p>24 is --</p> <p>25 A. 3/26/01.</p>	<p style="text-align: right;">Page 172</p> <p>1 SUSSMAN</p> <p>2 passport is in our possession and you can</p> <p>3 inspect it any time you wanted.</p> <p>4 MS. NIGRO: I never got that notice,</p> <p>5 but I would like to schedule time to look at</p> <p>6 it and the machines.</p> <p>7 Q. Is it your only basis that you haven't</p> <p>8 seen the original passports?</p> <p>9 A. Continue. Sorry.</p> <p>10 Q. Is your only basis for questioning</p> <p>11 whether Mr. Russ was outside of the country that</p> <p>12 you haven't seen the original passport?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. No.</p> <p>15 Q. What other basis do you have for</p> <p>16 believing he was not actually out of the country?</p> <p>17 A. Are you asking me for my opinion about</p> <p>18 the validity of his claim?</p> <p>19 Q. I am asking you based upon -- I will</p> <p>20 ask it again.</p> <p>21 Based upon information presented to</p> <p>22 Northern Leasing and to you, was Judson Russ</p> <p>23 outside of the United States on March 26, 2001?</p> <p>24 MS. NIGRO: Objection.</p> <p>25 A. Time frame for that?</p>

43 (Pages 169 to 172)

<p style="text-align: right;">Page 173</p> <p>1 SUSSMAN</p> <p>2 Q. On March 26, 2001.</p> <p>3 A. Today, what is my opinion based on the</p> <p>4 information provided to me?</p> <p>5 Q. Yes.</p> <p>6 A. From his passport, it looked like he</p> <p>7 was out of the country.</p> <p>8 Q. There was also a visa that showed he</p> <p>9 was out of the country, right?</p> <p>10 MS. NIGRO: Show him the document.</p> <p>11 A. I don't remember.</p> <p>12 Q. Do you have any legitimate basis for</p> <p>13 questioning his passport?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 MR. ALTMAN: I can strike that.</p> <p>16 Q. Do you have any basis for believing his</p> <p>17 passport is not --</p> <p>18 MS. NIGRO: Doctored?</p> <p>19 Q. -- his passport is not genuine?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 A. I have a sense -- had a sense that Mr.</p> <p>22 Russ was disingenuous about a lot of things</p> <p>23 relating to this lease, so that goes together with</p> <p>24 my answer to this question.</p> <p>25 Q. What basis do you have to say that Mr.</p>	<p style="text-align: right;">Page 175</p> <p>1 SUSSMAN</p> <p>2 he doesn't know.</p> <p>3 A. I didn't say that, but I don't know</p> <p>4 today exactly where this lease was signed and I</p> <p>5 don't know exactly where Mr. Russ was the date</p> <p>6 this was signed.</p> <p>7 Q. Didn't you have an obligation to</p> <p>8 ascertain that before you filed a lawsuit?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. I don't agree with that statement. I</p> <p>11 have an obligation to make a -- to have a good</p> <p>12 faith basis for asserting a claim.</p> <p>13 Q. What is your good faith basis for</p> <p>14 asserting that Mr. Russ was in the United States</p> <p>15 on March 26, 2001?</p> <p>16 MS. NIGRO: Objection.</p> <p>17 A. I didn't say that I am required to have</p> <p>18 a good faith basis for that particular -- for that</p> <p>19 fact. I am saying that I expect of myself as an</p> <p>20 attorney to have a good faith basis for asserting</p> <p>21 a claim under this lease and guarantee, period.</p> <p>22 Q. So the fact that it is unlikely that</p> <p>23 Mr. Russ actually signed the lease -- I will not</p> <p>24 get into the issue of whether he authorized</p> <p>25 anybody to sign the lease which is totally</p>
<p style="text-align: right;">Page 174</p> <p>1 SUSSMAN</p> <p>2 Russ was in the United States on March 26, 2001?</p> <p>3 A. I don't know where Mr. Russ was or is.</p> <p>4 Q. What information would have been good</p> <p>5 enough for NLS to convince NLS that Mr. Russ was</p> <p>6 not in the United States on March 26, 2001?</p> <p>7 MS. NIGRO: Objection.</p> <p>8 A. I don't know and I don't know if that</p> <p>9 is -- if that was the real issue in terms of</p> <p>10 evaluating his purported claim.</p> <p>11 Q. One thing is correct, if Mr. Russ was</p> <p>12 not in the United States, he didn't sign this</p> <p>13 document, correct?</p> <p>14 MS. NIGRO: Hypothetical. Objection.</p> <p>15 MR. ALTMAN: It is not hypothetical.</p> <p>16 MS. NIGRO: Yes, it is. You said if.</p> <p>17 A. Mr. Russ could have signed an agreement</p> <p>18 wherever he was.</p> <p>19 Q. This agreement was signed personally in</p> <p>20 Florida, wasn't it?</p> <p>21 A. How do you know?</p> <p>22 Q. So you're saying now that the ISO was</p> <p>23 in the Ukraine when -- was in the Ukraine when</p> <p>24 this lease was signed?</p> <p>25 MS. NIGRO: Objection. He clearly said</p>	<p style="text-align: right;">Page 176</p> <p>1 SUSSMAN</p> <p>2 separate. The fact that Mr. Russ did not himself</p> <p>3 sign this lease is not anything you were concerned</p> <p>4 about?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 A. It is something that I would have been</p> <p>7 concerned about, but I disagree with the</p> <p>8 separation of the two issues. It is directly</p> <p>9 connected, the authorization, the authority of</p> <p>10 someone to sign his name or lack thereof.</p> <p>11 Q. Shouldn't this have been signed if --</p> <p>12 this is only -- and plaintiff is not conceding</p> <p>13 this, Mr. Magyari was given authority; shouldn't</p> <p>14 this have been signed Daniel Magyari and not</p> <p>15 Judson Russ?</p> <p>16 MS. NIGRO: Objection.</p> <p>17 A. I don't know. I tend to disagree with</p> <p>18 that statement.</p> <p>19 Q. As a person who enforces rights based</p> <p>20 upon leases, isn't it important for you to know</p> <p>21 agency type concepts in terms of what somebody is</p> <p>22 authorized to do and not do?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 Q. As an agent.</p> <p>25 MS. NIGRO: Objection.</p>

44 (Pages 173 to 176)

<p style="text-align: right;">Page 177</p> <p>1 SUSSMAN</p> <p>2 A. I don't know how to answer that</p> <p>3 question. It is important for me to know how to</p> <p>4 do my job.</p> <p>5 To the extent that those areas of law</p> <p>6 are relevant, then it is important for me to be</p> <p>7 aware of that, yes.</p> <p>8 Q. So my question to you is, if</p> <p>9 Mr. Magyari was given authority, shouldn't</p> <p>10 Mr. Magyari sign this lease in his name?</p> <p>11 MS. NIGRO: Objection. Asked and</p> <p>12 answered.</p> <p>13 Q. If that is who signed the lease.</p> <p>14 A. I understand your question. I don't</p> <p>15 agree that it is a -- that it is across the board</p> <p>16 rule that way.</p> <p>17 It is very often the case that there</p> <p>18 are authorized signatories and there are a number</p> <p>19 of ways of doing it. You can authorize somebody</p> <p>20 to sign your name or you can authorize -- Andrey</p> <p>21 signs Chris's name. He signs Chris's signature on</p> <p>22 legal documents and then he writes KS or vice</p> <p>23 versa. I have seen it both ways and both are</p> <p>24 appropriate.</p> <p>25 Q. There is an indication that the</p>	<p style="text-align: right;">Page 179</p> <p>1 SUSSMAN</p> <p>2 is MSI Orlando, Inc., isn't it?</p> <p>3 MS. NIGRO: The dealer's bill of sale?</p> <p>4 MR. ALTMAN: Yes.</p> <p>5 A. Yes.</p> <p>6 Q. It is also dated 3/26/01?</p> <p>7 A. Yes.</p> <p>8 Q. MSI Orlando, do you know if they have</p> <p>9 an office in the Ukraine?</p> <p>10 A. I don't know. Maybe Mr. Russ would</p> <p>11 know.</p> <p>12 Q. Who is responsible for knowing about</p> <p>13 your ISO's?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 Q. Knowing details of the ISO's; who</p> <p>16 Northern Leasing does business with.</p> <p>17 A. A number of people.</p> <p>18 Q. Who?</p> <p>19 A. My understanding, Sara Krieger, for</p> <p>20 example, would have knowledge about ISO's.</p> <p>21 MR. ALTMAN: Exhibit 121 is Bates</p> <p>22 number 896.</p> <p>23 (Exhibit 121, Bates number 896, marked</p> <p>24 for identification, as of this date.)</p> <p>25 Q. This is a document dated March 30,</p>
<p style="text-align: right;">Page 178</p> <p>1 SUSSMAN</p> <p>2 signature was not actually signed by the person</p> <p>3 whose name is there, correct?</p> <p>4 A. There is an indication where?</p> <p>5 Q. The situation you just described where</p> <p>6 Andrey might sign Mr. Chittur's name, there is</p> <p>7 also an indication that Andrey is signing for</p> <p>8 Mr. Chittur, isn't it?</p> <p>9 A. Yes.</p> <p>10 Q. It wouldn't be appropriate for Andrey</p> <p>11 to sign Mr. Chittur's name and not indicate that</p> <p>12 he was signing Mr. Chittur's name, correct?</p> <p>13 A. I disagree. I don't know -- no. I</p> <p>14 mean, I think it would be entirely appropriate if</p> <p>15 the authority was granted.</p> <p>16 Q. To sign without any indication that</p> <p>17 somebody was signing on your behalf?</p> <p>18 A. Yes.</p> <p>19 Q. Nevertheless, this lease was dated</p> <p>20 3/26/01, correct?</p> <p>21 A. Correct.</p> <p>22 Q. By the way, who was the ISO who brought</p> <p>23 the contract to Mr. Russ?</p> <p>24 A. I don't know.</p> <p>25 Q. Go to the fourth page of the lease. It</p>	<p style="text-align: right;">Page 180</p> <p>1 SUSSMAN</p> <p>2 2001?</p> <p>3 A. Correct.</p> <p>4 Q. Have you ever seen this document</p> <p>5 before?</p> <p>6 A. I believe I have.</p> <p>7 Q. This is a document purportedly</p> <p>8 giving -- Mr. Magyari is authorized to make any</p> <p>9 and all confirmations of service for Scan Check</p> <p>10 per the signed agreement that I have submitted for</p> <p>11 services. Please forward any questions that might</p> <p>12 pertain to this agreement to Mr. Magyari.</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. What is Scan Check; do you know?</p> <p>16 A. Not exactly.</p> <p>17 Q. Do you have any understanding what it</p> <p>18 is?</p> <p>19 A. I have my -- I think it is a -- I am</p> <p>20 guessing. I think it is a service for a check</p> <p>21 verification service equipment but relating to</p> <p>22 check verification processing, account, equipment.</p> <p>23 Q. What is the basis of that knowledge?</p> <p>24 A. My work for Northern Leasing.</p> <p>25 Q. Who provides that service?</p>

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<p style="text-align: right;">Page 181</p> <p>1 SUSSMAN</p> <p>2 A. Who provide the service in this</p> <p>3 particular case; is that the question?</p> <p>4 Q. I don't even know what Scan Check is</p> <p>5 because that is the only reference to Scan Check</p> <p>6 that I can see anywhere. I am trying to</p> <p>7 understand what it is and who sells it.</p> <p>8 A. From this document, I don't know -- I</p> <p>9 would imagine a variety of vendors sell services</p> <p>10 -- there are probably a number of service</p> <p>11 providers providing services for check</p> <p>12 verification.</p> <p>13 Q. The lease is dated 3/26/2001?</p> <p>14 MS. NIGRO: Referring to Exhibit 119?</p> <p>15 MR. ALTMAN: Yes.</p> <p>16 A. Yes.</p> <p>17 Q. What is date of this document?</p> <p>18 A. 3/30/2001.</p> <p>19 Q. That is after this lease was signed,</p> <p>20 isn't it?</p> <p>21 A. Yes.</p> <p>22 Q. Did you ever realize that before today?</p> <p>23 A. I don't know.</p> <p>24 Q. Doesn't that raise a question of</p> <p>25 whether Mr. Magyari actually had the authority he</p>	<p style="text-align: right;">Page 183</p> <p>1 SUSSMAN</p> <p>2 A. This document --</p> <p>3 Q. Dated March 30, 2001?</p> <p>4 A. -- is a basis for that belief. I am</p> <p>5 referring to 121.</p> <p>6 Q. A document dated after another document</p> <p>7 that was signed?</p> <p>8 A. Correct.</p> <p>9 Q. Can you explain to me how that</p> <p>10 demonstrates that on March 26, four days before</p> <p>11 this document was signed, Mr. Magyari had the</p> <p>12 authority?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. I did already.</p> <p>15 Q. I don't understand it. Could you</p> <p>16 explain it again? I must be a little slow.</p> <p>17 A. This document, and I am referring to</p> <p>18 Exhibit 121, is a letter from Judson Russ</p> <p>19 authorizing Daniel Magyari to make confirmations</p> <p>20 in connection with Scan Check services.</p> <p>21 Scan Check services, my understanding</p> <p>22 is that is referring to the IVI CTX 3000 equipment</p> <p>23 and related services associated with that</p> <p>24 equipment and the fact that it is dated on that</p> <p>25 date, the fact that this authorization is so close</p>
<p style="text-align: right;">Page 182</p> <p>1 SUSSMAN</p> <p>2 claimed to have at the time that the lease was</p> <p>3 signed?</p> <p>4 MS. NIGRO: Objection.</p> <p>5 A. It could raise a question. I could see</p> <p>6 it also -- but it is certainly not a</p> <p>7 contradiction. It is not -- it could support the</p> <p>8 same -- it could support it the same way.</p> <p>9 Q. If Mr. Magyari had the authority on</p> <p>10 March 30, okay, how does that support a document</p> <p>11 signed on March 26?</p> <p>12 A. Mr. Magyari had the authority on the</p> <p>13 30th in connection with this Scan Check servicing</p> <p>14 and presumably, the point of that authority was to</p> <p>15 facilitate these transactions.</p> <p>16 Q. How could he have had the authority to</p> <p>17 sign it on the date of lease if the authority was</p> <p>18 granted after the date of lease?</p> <p>19 A. This document tells me, if anything,</p> <p>20 that Mr. Magyari would have had the authority to</p> <p>21 execute the document on behalf of Mr. Russ.</p> <p>22 Q. Did he have it on March 26, 2001?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 A. I believe he did.</p> <p>25 Q. What is your basis for that belief --</p>	<p style="text-align: right;">Page 184</p> <p>1 SUSSMAN</p> <p>2 to the lease tells me they certainly were</p> <p>3 connected.</p> <p>4 The point of this document is to</p> <p>5 facilitate the -- facilitate the completion of</p> <p>6 these transactions so that these check cashing</p> <p>7 stores can get the services they wanted.</p> <p>8 Q. This document was not signed on March</p> <p>9 26, 2001? I am referring to Exhibit 121.</p> <p>10 Correct?</p> <p>11 MS. NIGRO: Objection.</p> <p>12 You can answer.</p> <p>13 A. The document speaks for itself.</p> <p>14 Q. Answer my question, please. It was not</p> <p>15 signed on March 26, 2001, correct?</p> <p>16 A. I don't know.</p> <p>17 MS. NIGRO: How does he know that?</p> <p>18 Q. It is dated March 30, 2001?</p> <p>19 A. Correct.</p> <p>20 Q. It has two faxes on it, both dated</p> <p>21 3/30/2001?</p> <p>22 A. Correct.</p> <p>23 Q. One is from area code 407. That is in</p> <p>24 the Orlando area, correct?</p> <p>25 A. I don't know.</p>

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<p style="text-align: right;">Page 185</p> <p>1 SUSSMAN</p> <p>2 Q. I will represent to you that it is.</p> <p>3 MS. NIGRO: I believe you.</p> <p>4 Q. Area code 847, that is the Chicago</p> <p>5 suburbs. Is either one of those from the Ukraine?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Do you see anything on this document</p> <p>8 that would suggest it was faxed or transmitted in</p> <p>9 any way from the Ukraine?</p> <p>10 A. I can't answer that question.</p> <p>11 Counsel, you have represented that</p> <p>12 these area codes, Orlando and Chicago suburbs,</p> <p>13 that might be the case. I don't know how a fax</p> <p>14 transmitted from the Ukraine would be</p> <p>15 transmitted -- the technology in transmitting the</p> <p>16 fax, but I am sure there is a variety of ways that</p> <p>17 faxes can get transmitted. I don't know how those</p> <p>18 numbers would be displayed.</p> <p>19 Q. Is there anything on this document</p> <p>20 suggestive that this document was faxed from the</p> <p>21 Ukraine?</p> <p>22 MS. NIGRO: Objection.</p> <p>23 A. Affirmatively suggesting that?</p> <p>24 Q. Yes.</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 187</p> <p>1 SUSSMAN</p> <p>2 keeping the leases; wasn't objecting to it.</p> <p>3 There were points where that was</p> <p>4 indicated -- that was indicated in the file.</p> <p>5 Q. That wasn't my question.</p> <p>6 My question is, is there any document</p> <p>7 -- if Mr. Russ didn't sign this document, is there</p> <p>8 any document that purportedly authorizes someone</p> <p>9 to sign and bind Mr. Russ personally to any</p> <p>10 obligations?</p> <p>11 A. The verification form, for example,</p> <p>12 would be one.</p> <p>13 Q. Which was verified by Mr. Magyari?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 You can answer.</p> <p>16 A. Correct.</p> <p>17 Q. And that shows that Mr. -- somebody had</p> <p>18 the authority to bind Mr. Russ personally?</p> <p>19 A. If you're asking if that provides</p> <p>20 authority, if that is sufficient authority to bind</p> <p>21 Mr. Russ, my answer is it could.</p> <p>22 Q. Can we agree that Mr. Russ was not</p> <p>23 spoken to on the verifications?</p> <p>24 A. I am not ready to agree to that. I</p> <p>25 stated earlier that from the verification form,</p>
<p style="text-align: right;">Page 186</p> <p>1 SUSSMAN</p> <p>2 Q. In what capacity does this letter</p> <p>3 suggest Mr. Magyari has the authority to act?</p> <p>4 A. Can you be a little more specific?</p> <p>5 Q. Does this letter allow Mr. Magyari to</p> <p>6 subject Mr. Russ to personal obligations?</p> <p>7 A. It doesn't appear to.</p> <p>8 Q. If Mr. Magyari signed Mr. Russ's name</p> <p>9 to the personal guarantee, he wasn't authorized to</p> <p>10 do so, was he?</p> <p>11 A. From this agreement here?</p> <p>12 Q. Yes.</p> <p>13 A. I don't think so.</p> <p>14 Q. Then if Mr. Russ did not sign the</p> <p>15 document because he was in the Ukraine as his</p> <p>16 passport demonstrates, then is there any evidence</p> <p>17 that any other individual had the authority to</p> <p>18 bind Mr. Russ personally to anything in respect to</p> <p>19 any of these -- this transaction?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 You can answer.</p> <p>22 A. My recollection of the file is that Mr.</p> <p>23 Russ was fully aware or -- Mr. Russ was aware -- I</p> <p>24 don't know if I would say -- was aware of these</p> <p>25 transactions and ratified them; was interested in</p>	<p style="text-align: right;">Page 188</p> <p>1 SUSSMAN</p> <p>2 there is no indication that he participated in the</p> <p>3 verification process.</p> <p>4 Q. I personally have seen Northern Leasing</p> <p>5 Systems -- one of their affiliates' lease data</p> <p>6 base and its comprehensiveness and their data.</p> <p>7 Would you agree that Northern Leasing</p> <p>8 is comprehensive in the kind of information that</p> <p>9 it maintains associated with a lease?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 He doesn't know what you're referring</p> <p>12 to -- he doesn't know what you have seen.</p> <p>13 A. I also don't know what you mean; part</p> <p>14 of the rhyme.</p> <p>15 Q. NLS data base is a pretty extensive</p> <p>16 data base?</p> <p>17 A. Correct.</p> <p>18 Q. It contains a lot of information about</p> <p>19 a lease?</p> <p>20 A. Correct.</p> <p>21 Q. Pretty much you would never have to go</p> <p>22 anywhere else, at least in the last seven, eight</p> <p>23 years, to look for information about a lease,</p> <p>24 correct?</p> <p>25 A. Incorrect.</p>

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<p style="text-align: right;">Page 189</p> <p>1 SUSSMAN</p> <p>2 Q. What would you not find in the NLS</p> <p>3 system?</p> <p>4 A. There is additional information.</p> <p>5 There is another -- there are other</p> <p>6 software programs. I think I mentioned one.</p> <p>7 There is another one called Lapse. That contains</p> <p>8 other information.</p> <p>9 Q. What does Lapse contain?</p> <p>10 A. Information about the originations</p> <p>11 process of the lease. It is sort of a -- I don't</p> <p>12 know enough about how the systems work, but I know</p> <p>13 there is information contained.</p> <p>14 Q. Is Lapse currently being used or is</p> <p>15 that a legacy system?</p> <p>16 A. It is currently being used.</p> <p>17 MS. NIGRO: What is a legacy system?</p> <p>18 MR. ALTMAN: He knows it.</p> <p>19 MS. NIGRO: Sorry.</p> <p>20 Q. Is a legacy system a system that was in</p> <p>21 use at one time and is no longer being used?</p> <p>22 A. Right.</p> <p>23 Q. Is Lapse still being used?</p> <p>24 MS. NIGRO: It is a nicer word than</p> <p>25 retired.</p>	<p style="text-align: right;">Page 191</p> <p>1 SUSSMAN</p> <p>2 realistic basis for claiming that Mr. Russ</p> <p>3 actually received -- actually verified these</p> <p>4 leases and not Mr. Magyari?</p> <p>5 MS. NIGRO: Objection.</p> <p>6 You can answer.</p> <p>7 A. No. From the verification form, I</p> <p>8 stated earlier there is no indication that Mr.</p> <p>9 Russ participated in the verification process.</p> <p>10 Q. Or for all four of them, correct?</p> <p>11 MS. NIGRO: Objection.</p> <p>12 Q. Do I need to show you all of them?</p> <p>13 A. To the extent that they are identical,</p> <p>14 then my answer is the same.</p> <p>15 Q. How is it that that verification by</p> <p>16 somebody else is a validation of whoever signed</p> <p>17 the personal guarantee section of the leases that</p> <p>18 Mr. Russ granted that person the authority to do</p> <p>19 so?</p> <p>20 A. Again, if you're asking me for the</p> <p>21 basis of my opinion today about why or why -- why</p> <p>22 or why not Mr. Russ would be liable under this</p> <p>23 lease, if that is what you're asking me --</p> <p>24 Q. Let's take today.</p> <p>25 A. Today, then the verification form which</p>
<p style="text-align: right;">Page 190</p> <p>1 SUSSMAN</p> <p>2 A. Yes.</p> <p>3 Q. What other data bases are currently in</p> <p>4 use at Northern Leasing?</p> <p>5 A. No. That is the one that I know of.</p> <p>6 Q. You still take the position that you're</p> <p>7 unsure as to whether Mr. Russ actually verified</p> <p>8 these leases?</p> <p>9 A. I am saying that to this day, my review</p> <p>10 of the file and having seen Mr. Russ, having seen</p> <p>11 his statements together with his -- with</p> <p>12 information in the file, I don't believe that what</p> <p>13 he is saying is true in all respects.</p> <p>14 I believe that he knew about these</p> <p>15 leases. I believe he authorized Magyari to sign</p> <p>16 for the -- sign his leases -- if he didn't sign it</p> <p>17 himself, then he authorized him to sign these</p> <p>18 agreements. I think he wanted to enter into these</p> <p>19 agreements for his company.</p> <p>20 So I don't -- I certainly don't know</p> <p>21 everything about this, but there is certain</p> <p>22 information that tells me that not everything he</p> <p>23 is saying is so.</p> <p>24 Q. That doesn't answer my question.</p> <p>25 My question was, do you have any</p>	<p style="text-align: right;">Page 192</p> <p>1 SUSSMAN</p> <p>2 indicates that there was a verification process</p> <p>3 between Northern Leasing and Mr. Magyari tells me</p> <p>4 that the issue about the authority of Mr. Magyari,</p> <p>5 to the -- with Mr. Russ in connection with these</p> <p>6 agreements was an issue that was present at the</p> <p>7 time of the origination of the lease, and it was</p> <p>8 brought to their attention, and based on my</p> <p>9 understanding of Northern Leasing's interests and</p> <p>10 policies and procedures, that tells me that they</p> <p>11 were comfortable funding this lease and not --</p> <p>12 instead of entering into an awful deal where they</p> <p>13 will end up losing money because the signatories</p> <p>14 weren't authorized.</p> <p>15 MR. ALTMAN: Read back the question.</p> <p>16 (Record read.)</p> <p>17 MR. ALTMAN: Objection. Not</p> <p>18 responsive.</p> <p>19 Q. At the time that you were filing a</p> <p>20 lawsuit against Mr. Russ -- we will get to it -- I</p> <p>21 will represent you are the individual that sent</p> <p>22 the letter to Mr. Russ at the time -- what did you</p> <p>23 do to conclude that the personal guarantee was</p> <p>24 valid?</p> <p>25 A. I don't remember.</p>

48 (Pages 189 to 192)

<p style="text-align: right;">Page 193</p> <p>1 SUSSMAN</p> <p>2 Q. Did you keep any notes of what you did</p> <p>3 to verify the personal guarantee?</p> <p>4 A. I stated earlier that to the extent</p> <p>5 that a note was made, it could have been stored in</p> <p>6 the CCS system. I would have generated a comment.</p> <p>7 Q. You're aware that Mr. Russ was out of</p> <p>8 the country essentially from long before this</p> <p>9 lease till more than a year after this lease was</p> <p>10 signed, correct?</p> <p>11 MS. NIGRO: Objection.</p> <p>12 A. I am not -- I don't understand exactly</p> <p>13 where he was; how he was running his companies; he</p> <p>14 was present or -- to this day, I don't understand</p> <p>15 how that works.</p> <p>16 Q. Do you have any basis to suspect that</p> <p>17 he spent an extensive amount of time in the United</p> <p>18 States during that time period?</p> <p>19 A. Yes.</p> <p>20 Q. What is your --</p> <p>21 A. My recollection is that he was in and</p> <p>22 out.</p> <p>23 From the documents provided, it was</p> <p>24 hard for me to determine when he was in and when</p> <p>25 he was out, but it looked to me like he had</p>	<p style="text-align: right;">Page 195</p> <p>1 SUSSMAN</p> <p>2 This is a credit notification for Mr. Russ,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. On one of the four leases, correct?</p> <p>6 A. I guess so. I can't exactly tell but</p> <p>7 it sounds right.</p> <p>8 Q. It shows that the vendor was paid</p> <p>9 \$2,034.48, correct, for this lease?</p> <p>10 A. I don't think this document shows he</p> <p>11 was paid. This was an application or -- but that</p> <p>12 is the amount of funding sought by the vendor.</p> <p>13 Q. Sought.</p> <p>14 It says, dear vendor, the application</p> <p>15 you have submitted for the above referenced lessee</p> <p>16 has been approved as follows, funding amount.</p> <p>17 That is from NLS to the vendor?</p> <p>18 A. Yes.</p> <p>19 Q. So that is what Northern Leasing</p> <p>20 intends to pay the vendor?</p> <p>21 A. Yes.</p> <p>22 Q. That is not subject to further</p> <p>23 negotiation, right?</p> <p>24 MS. NIGRO: Objection.</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 194</p> <p>1 SUSSMAN</p> <p>2 traveled to and from a few times.</p> <p>3 Q. A few times.</p> <p>4 Do you know how much time he spent in</p> <p>5 the United States in that time period?</p> <p>6 A. No.</p> <p>7 Q. Was it more than a few weeks?</p> <p>8 A. I don't know.</p> <p>9 Q. If it was a few weeks out of some 15</p> <p>10 months, would you consider that an extensive</p> <p>11 amount of time in the United States?</p> <p>12 MS. NIGRO: Objection.</p> <p>13 A. I don't even know what extensive means.</p> <p>14 Whether he was here or there, I am just</p> <p>15 saying there seems to be a some confusion as to</p> <p>16 how he was managing his operations when he was --</p> <p>17 if he was not present and yet there is indications</p> <p>18 that he certainly was managing his operations, his</p> <p>19 stores. So how that information all fit together</p> <p>20 is not entirely clear to me today.</p> <p>21 MR. ALTMAN: We will mark this document</p> <p>22 as Exhibit 122, Bates number 879.</p> <p>23 (Exhibit 122, Bates number 879, marked</p> <p>24 for identification, as of this date.)</p> <p>25 Q. This is a letter dated March 29, 2001.</p>	<p style="text-align: right;">Page 196</p> <p>1 SUSSMAN</p> <p>2 (Exhibit 123, Bates number 853, marked</p> <p>3 for identification, as of this date.)</p> <p>4 Q. In fact, Exhibit 123, Bates number 853,</p> <p>5 which is a Center Point check request shows a</p> <p>6 check request to be sent to MSI Orlando for</p> <p>7 \$2034.48?</p> <p>8 A. Yes.</p> <p>9 Q. This is one of the leases?</p> <p>10 A. Yes.</p> <p>11 MR. ALTMAN: I will mark this as</p> <p>12 Exhibit 124.</p> <p>13 (Exhibit 124, Bates number 876 and 851,</p> <p>14 marked for identification, as of this date.)</p> <p>15 MR. ALTMAN: Bates number 876 is</p> <p>16 Exhibit 124.</p> <p>17 Q. I will hand this to you. This is a</p> <p>18 charge back request terminating a lease, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Dated 9/11/02, correct?</p> <p>21 A. Yes.</p> <p>22 Q. This demonstrates that there is -- this</p> <p>23 is a document where you were seeking to recover</p> <p>24 money from the ISO, correct?</p> <p>25 MS. NIGRO: Objection.</p>

49 (Pages 193 to 196)

Page 197

1 SUSSMAN
 2 You mean Northern Leasing?
 3 MR. ALTMAN: Yes.
 4 A. Also, I don't agree -- I disagree. The
 5 document is a form that would be utilized by
 6 Northern Leasing to seek a charge back, but it is
 7 not clear from the document alone what action was
 8 taken -- was ought to be taken.
 9 Q. I didn't ask that.
 10 I am asking, this is the kind of form
 11 that NLS uses when it wants to get money back from
 12 a vendor?
 13 A. In connection with that effort, yes.
 14 Q. It says fraud here, correct?
 15 A. It says that, yes.
 16 Q. There is no question that by 9/11/2002,
 17 NLS was aware that Mr. Russ claimed there is some
 18 kind of fraudulent activity associated with his
 19 leases?
 20 MS. NIGRO: Objection.
 21 A. I tend to share that assumption, but I
 22 don't have all the information in front of me to
 23 make that determination, but it is a fair
 24 assumption.
 25 Q. Will you accept my representation that

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1 SUSSMAN
 2 this happened with all four of the leases?
 3 A. No.
 4 MR. ALTMAN: Just to save an exhibit, I
 5 will add a page to Exhibit 124.
 6 MS. NIGRO: That is totally up to you.
 7 It is your record.
 8 MR. ALTMAN: Let's save a number. So
 9 we are adding Bates 851 to Exhibit 124.
 10 Q. The second page of 124, this is a
 11 charge back request form for another one of the
 12 Russ leases, correct?
 13 A. Yes.
 14 Q. It has a different lease number at the
 15 top?
 16 A. Correct.
 17 Q. It says substantively the same thing,
 18 correct?
 19 A. Yes.
 20 Q. I don't have them here, but would you
 21 have any expectation that the other two leases
 22 would be any different?
 23 A. To the extent that -- I will say what I
 24 said earlier. To the extent that the documents
 25 contain the same information, then I would be

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1 SUSSMAN
 2 happy to respond to questions that --
 3 Q. I wasn't going to ask you a question.
 4 MR. ALTMAN: We will mark Exhibit 125,
 5 Bates 989, I think -- the Bates number is cut
 6 off.
 7 (Exhibit 125, Bates 989, marked for
 8 identification, as of this date.)
 9 MR. ALTMAN: Off the record.
 10 (Discussion off the record.)
 11 MR. ALTMAN: I had a brief discussion
 12 with counsel.
 13 Where there are multiple copies of many
 14 of the documents that have been used as
 15 exhibits, some of which may be better copies
 16 than others and that counsel for the parties
 17 have agreed that another better copy of the
 18 document that is the same as one that has been
 19 marked can be used in its place for trial
 20 purposes.
 21 MS. NIGRO: To the extent that it is
 22 authenticated and admissible and all that
 23 other good stuff that goes with trial.
 24 Q. Exhibit 125. Do you see there is an
 25 invoice service charge?

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1 SUSSMAN
 2 A. Yes.
 3 Q. Where does it say in the lease anything
 4 about invoice service charges?
 5 A. I will refer you to 119.
 6 If you look in the about-your-bank
 7 section, right above the bolded capitalized
 8 portion, almost right in the middle of that
 9 section --
 10 Q. I see it. In the section
 11 about-your-bank is where you put in that you're
 12 going to charge if you invoice them.
 13 That is fine. Thank you.
 14 MR. ALTMAN: The next exhibit is
 15 Exhibit 126, Bates number 1084 through 1085.
 16 (Exhibit 126, Bates number 1084 through
 17 1085, marked for identification, as of this
 18 date.)
 19 Q. This is entitled affidavit of forgery.
 20 Have you ever seen this document before?
 21 A. I believe I have.
 22 Q. On the 21st of August of 2002, Mr. Russ
 23 signed an affidavit sent to him by Northern
 24 Leasing Systems, correct? It has Northern Leasing
 25 System at the top?

50 (Pages 197 to 200)

<p style="text-align: right;">Page 201</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: Objection.</p> <p>3 A. Looks that way, yes.</p> <p>4 Q. On the second page of this, you</p> <p>5 provided some signature information, correct?</p> <p>6 A. Mr. Russ?</p> <p>7 Q. Yes.</p> <p>8 A. Yes. It looks like signature</p> <p>9 specimens.</p> <p>10 MR. ALTMAN: We will mark Exhibit 127.</p> <p>11 It is Bates number 850.</p> <p>12 (Exhibit 127, Bates number 850, marked</p> <p>13 for identification, as of this date.)</p> <p>14 Q. On 126, can we agree that he wrote down</p> <p>15 the wrong date on point 2; that date is in error,</p> <p>16 the lease date is 3/26/2001?</p> <p>17 MS. NIGRO: Objection.</p> <p>18 A. Yeah. I don't have a -- I don't agree.</p> <p>19 Q. You think there are four other leases</p> <p>20 from March 26, 2002?</p> <p>21 A. No, but I don't know what -- if he made</p> <p>22 a mistake, then why he would have made -- it was a</p> <p>23 mistake or -- I don't know. The document has a</p> <p>24 date on it. If it was referring to -- what is</p> <p>25 meant by that --</p>	<p style="text-align: right;">Page 203</p> <p>1 SUSSMAN</p> <p>2 This is a private individual, correct?</p> <p>3 A. Correct.</p> <p>4 Q. This was not done in the context of</p> <p>5 litigation, correct?</p> <p>6 A. I don't know.</p> <p>7 Q. Was a lawsuit filed against Mr. Russ at</p> <p>8 the time of this affidavit?</p> <p>9 A. I don't think so, but --</p> <p>10 Q. I will represent to you the lawsuit was</p> <p>11 filed after July 15, 2003.</p> <p>12 A. Okay.</p> <p>13 Q. So this was not done in connection with</p> <p>14 a lawsuit?</p> <p>15 A. Correct.</p> <p>16 MR. ALTMAN: Now I will mark Exhibit</p> <p>17 127, Bates number 850.</p> <p>18 (Exhibit 127, Bates number 850, marked</p> <p>19 for identification, as of this date.)</p> <p>20 Q. Have you seen this document before?</p> <p>21 A. I don't remember.</p> <p>22 Q. This is a letter purportedly from Mr.</p> <p>23 Russ to Northern Leasing, correct?</p> <p>24 A. Correct.</p> <p>25 Q. This is where Mr. Russ is supplying you</p>
<p style="text-align: right;">Page 202</p> <p>1 SUSSMAN</p> <p>2 Q. He has the right month?</p> <p>3 A. Yes.</p> <p>4 Q. He has the right year?</p> <p>5 A. Just -- the wrong year.</p> <p>6 Q. He has the right day?</p> <p>7 A. Correct.</p> <p>8 Q. He has the right month, correct?</p> <p>9 A. Correct.</p> <p>10 Q. He has the right lease numbers,</p> <p>11 correct?</p> <p>12 A. I have to check them, but let's assume</p> <p>13 he does.</p> <p>14 Q. The only thing that appears there to</p> <p>15 be -- the year is incorrect?</p> <p>16 A. Correct.</p> <p>17 Q. Are there four other leases that Mr.</p> <p>18 Russ signed in addition to the four that have been</p> <p>19 the subject of the lawsuit?</p> <p>20 A. Not that I am aware of. I am aware of</p> <p>21 a situation where a similar mistake was made by</p> <p>22 myself in connection with litigation papers by</p> <p>23 Mr. Chittur where Mr. Chittur was not willing to</p> <p>24 make a similar assumption.</p> <p>25 Q. This is not a lawyer who is doing this.</p>	<p style="text-align: right;">Page 204</p> <p>1 SUSSMAN</p> <p>2 the affidavit of forgery, correct?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 Supplying Northern Leasing?</p> <p>5 MR. ALTMAN: Northern Leasing.</p> <p>6 A. I have to read it. The letter</p> <p>7 references an affidavit of forgery that was</p> <p>8 previously supplied.</p> <p>9 Q. All right. We can move on.</p> <p>10 At any time did anybody did you or</p> <p>11 anybody at NLS complain to Mr. Russ that you</p> <p>12 believed his passports were not genuine?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. I don't know -- I think that that issue</p> <p>15 was raised and discussed between counsel at</p> <p>16 various points in the litigation.</p> <p>17 Q. When you say between counsel --</p> <p>18 A. Myself and Mr. Chittur's firm.</p> <p>19 Q. Was it reviewed before you filed suit</p> <p>20 against Mr. Russ?</p> <p>21 A. I don't remember, as I stated earlier,</p> <p>22 the review for this particular file; these</p> <p>23 particular files. I don't recall today.</p> <p>24 Q. If, in fact, it is true that Mr. Russ</p> <p>25 was in the Ukraine as his passport indicates,</p>

51 (Pages 201 to 204)

<p style="text-align: right;">Page 205</p> <p>1 SUSSMAN</p> <p>2 would you agree he didn't sign these leases</p> <p>3 himself?</p> <p>4 MS. NIGRO: Objection.</p> <p>5 A. I will say this. If I was -- I stated</p> <p>6 earlier that I don't know the precise location of</p> <p>7 where the lease was signed and where Mr. Russ was</p> <p>8 when the lease was signed. I don't know. And I</p> <p>9 don't remember what I thought at the time -- what</p> <p>10 I was aware of, what I reviewed and what I thought</p> <p>11 at the time prior to initiating the lawsuit.</p> <p>12 Q. In deciding to file a lawsuit, you have</p> <p>13 to take a look at all the evidence, correct, that</p> <p>14 you have; is that correct?</p> <p>15 A. No, not all the evidence but --</p> <p>16 Q. You take a look at a set of -- all was</p> <p>17 the wrong term.</p> <p>18 You look at a set of evidence before</p> <p>19 deciding to file a lawsuit, correct?</p> <p>20 A. Information.</p> <p>21 Q. Information; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Some of it is contradictory, correct?</p> <p>24 A. It could be on occasion.</p> <p>25 Q. Some of it requires that you make an</p>	<p style="text-align: right;">Page 207</p> <p>1 SUSSMAN</p> <p>2 A. As I sit here today, the signature to</p> <p>3 me looks similar. The signature on other</p> <p>4 documents looks pretty similar. So that is -- if</p> <p>5 you want that --</p> <p>6 Q. If it is likely that Mr. Russ was not</p> <p>7 in the United States --</p> <p>8 MS. NIGRO: Objection.</p> <p>9 MR. ALTMAN: Hold on.</p> <p>10 Q. Is it likely that these leases were</p> <p>11 signed in the United States?</p> <p>12 A. Typically, the leases are signed in the</p> <p>13 United States.</p> <p>14 Q. Have you seen any evidence at all that</p> <p>15 these leases were not signed in the United States?</p> <p>16 A. To the extent that Mr. Russ was in the</p> <p>17 Ukraine at the time the leases were signed, that</p> <p>18 is evidence that the leases may have been signed</p> <p>19 in the Ukraine.</p> <p>20 Q. Aside from that, have you seen any</p> <p>21 evidence at all that these leases were signed</p> <p>22 outside of the United States?</p> <p>23 A. No, not to the my knowledge.</p> <p>24 MS. NIGRO: Let's take a break.</p> <p>25 THE VIDEOGRAPHER: The time is 4:32</p>
<p style="text-align: right;">Page 206</p> <p>1 SUSSMAN</p> <p>2 assessment of how likely that information is to be</p> <p>3 true; is that fair?</p> <p>4 A. For purposes of my responsibility as an</p> <p>5 attorney, yes, that is part of -- that is</p> <p>6 necessary to carry on my duty.</p> <p>7 Q. As you sit here today, is it likely</p> <p>8 that Mr. Russ was outside of the United States at</p> <p>9 the time he signed these leases?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 A. It is -- it appears to me -- and I</p> <p>12 think it appeared to me when I became aware of the</p> <p>13 information that he seemed to have traveled to the</p> <p>14 Ukraine. That much is clear to me.</p> <p>15 When, for how long, with who, for what</p> <p>16 purpose, who was running his business and all of</p> <p>17 that, is not clear to me.</p> <p>18 Q. Is it also likely that he himself did</p> <p>19 not sign these leases?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 Q. If you put any alleged authority aside,</p> <p>22 I am talking physically whether he himself put the</p> <p>23 pen to the paper and signed the leases.</p> <p>24 MS. NIGRO: Objection. Asked and</p> <p>25 answered.</p>	<p style="text-align: right;">Page 208</p> <p>1 SUSSMAN</p> <p>2 p.m. We are off the record.</p> <p>3 (Recess taken.)</p> <p>4 THE VIDEOGRAPHER: The time is now 4:52</p> <p>5 p.m. We are back on record.</p> <p>6 MR. ALTMAN: Mr. Sussman, this is</p> <p>7 Exhibit 128, Bates number 892.</p> <p>8 (Exhibit 128, Bates number 892, marked</p> <p>9 for identification, as of this date.)</p> <p>10 Q. This is some information provided to</p> <p>11 you by Mr. Russ. Have you ever seen that before?</p> <p>12 MS. NIGRO: Objection.</p> <p>13 You can answer.</p> <p>14 A. I don't think that is correct to say it</p> <p>15 was provided to me.</p> <p>16 Q. It was provided to Northern Leasing,</p> <p>17 correct?</p> <p>18 A. It appears to be so.</p> <p>19 Q. You represent Northern Leasing,</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. It would have been a document that you</p> <p>23 would have reviewed in your representation of</p> <p>24 Northern Leasing?</p> <p>25 A. Today I can say that I likely saw this</p>

52 (Pages 205 to 208)

<p style="text-align: right;">Page 209</p> <p>1 SUSSMAN</p> <p>2 document at some point in time, but I don't recall</p> <p>3 when I saw it.</p> <p>4 MR. ALTMAN: Exhibit 129 is Bates</p> <p>5 numbers 1207 through 1210.</p> <p>6 (Exhibit 129, Bates numbers 1207</p> <p>7 through 1210, marked for identification, as of</p> <p>8 this date.)</p> <p>9 Q. Exhibit 129 is a letter dated July 15,</p> <p>10 2003 signed by you, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Is there any validation clause on that</p> <p>13 letter?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 You can answer.</p> <p>16 A. To the extent that you're referring to</p> <p>17 a validation clause required under the fair debt</p> <p>18 collection practices act, this letter does not --</p> <p>19 does not contain one, nor is one required.</p> <p>20 MR. ALTMAN: Objection. Nonresponsive</p> <p>21 to the portion after does not contain one.</p> <p>22 MS. NIGRO: Objection. He is allowed</p> <p>23 to give his full response.</p> <p>24 MR. ALTMAN: No, he is not. He is</p> <p>25 allowed to answer my question.</p>	<p style="text-align: right;">Page 211</p> <p>1 SUSSMAN</p> <p>2 affidavit of forgery before these leases, correct?</p> <p>3 MS. NIGRO: Objection.</p> <p>4 You can answer.</p> <p>5 A. Correct -- when you say Northern</p> <p>6 Leasing, certainly there were individuals who</p> <p>7 would have been aware.</p> <p>8 Q. That would be important for you to know</p> <p>9 in preparing these complaints, correct?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 A. Correct.</p> <p>12 Q. Would it have been appropriate for you</p> <p>13 to comment upon the alleged forgeries in this</p> <p>14 complaint?</p> <p>15 MS. NIGRO: Objection.</p> <p>16 A. Can you repeat it?</p> <p>17 Q. Would it have been appropriate in the</p> <p>18 factual allegations of your complaint to have put</p> <p>19 in any mention of the alleged forgery?</p> <p>20 A. For the purpose of asserting a breach</p> <p>21 of contract cause of action, it is not required.</p> <p>22 I stated earlier, a lesser statement --</p> <p>23 less information is perfectly appropriate under</p> <p>24 the CPLR and so my answer is that there is nothing</p> <p>25 inappropriate about asserting a breach of contract</p>
<p style="text-align: right;">Page 210</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: He did.</p> <p>3 MR. ALTMAN: And then added more.</p> <p>4 MS. NIGRO: You don't mind when he adds</p> <p>5 more to other questions when it is convenient</p> <p>6 to you.</p> <p>7 MR. ALTMAN: That is my prerogative.</p> <p>8 Q. This document here, by the way, is a</p> <p>9 letter that you sent on July 15, 2003 and --</p> <p>10 MS. NIGRO: Objection.</p> <p>11 Is that a question?</p> <p>12 Q. -- on one of the leases, correct?</p> <p>13 A. Correct. It is dated July 15, 2003.</p> <p>14 Q. Would you have sent the same letter out</p> <p>15 for the other three leases?</p> <p>16 A. A similar letter, yes.</p> <p>17 Q. At this time you were aware that Mr.</p> <p>18 Russ had claimed that the leases this been forged,</p> <p>19 correct?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 A. Not correct. I stated that I don't</p> <p>22 recall what -- I don't recall reviewing these four</p> <p>23 leases today. I don't recall it.</p> <p>24 Q. You would agree that Northern Leasing</p> <p>25 certainly knew that Mr. Russ had signed an</p>	<p style="text-align: right;">Page 212</p> <p>1 SUSSMAN</p> <p>2 claim.</p> <p>3 Q. On page 1209, point five says, pursuant</p> <p>4 to the business described above on 4/2/201,</p> <p>5 plaintiff entered into a non-cancelable lease</p> <p>6 agreement with Rapid Cash; payment on which was</p> <p>7 personally guaranteed by defendant. Copy of the</p> <p>8 agreement is attached as Exhibit A.</p> <p>9 A. Correct.</p> <p>10 Q. First of all, the lease was entered</p> <p>11 into on 3/26/2001?</p> <p>12 MS. NIGRO: Objection.</p> <p>13 A. Not correct.</p> <p>14 Q. When was the lease signed?</p> <p>15 MS. NIGRO: Objection. Asked and</p> <p>16 answered.</p> <p>17 Are you asking when it was dated?</p> <p>18 Q. The lease was signed by whomever,</p> <p>19 whether it was Mr. Russ or otherwise, on 3/26/201,</p> <p>20 correct?</p> <p>21 A. The lease is dated 3/26/01.</p> <p>22 Q. That is when it was signed, correct?</p> <p>23 A. The signature appearing on the lessee</p> <p>24 acceptance portion and the personal guarantee</p> <p>25 section of the lease contains a date of 3/26/01.</p>

53 (Pages 209 to 212)

<p style="text-align: right;">Page 213</p> <p>1 SUSSMAN</p> <p>2 Q. That is not 4/2/2001?</p> <p>3 A. Correct.</p> <p>4 Q. So that is the wrong date?</p> <p>5 A. Incorrect.</p> <p>6 Q. What is that date?</p> <p>7 A. That date represents my understanding</p> <p>8 that that is the date that Northern Leasing</p> <p>9 accepted the lease and signed or executed the</p> <p>10 lease or issued the funding.</p> <p>11 Q. The individual was bound on 3/26/2001</p> <p>12 but Northern Leasing wasn't bound on 3/26/201?</p> <p>13 A. Incorrect.</p> <p>14 Q. What is the date, 3/26 or 4/2?</p> <p>15 A. The date of what?</p> <p>16 Q. That the lease was entered into.</p> <p>17 A. On 4/2/2001, the lease agreement was</p> <p>18 reached retroactive to -- on 4/2 is the date that</p> <p>19 Northern Leasing entered into the transaction.</p> <p>20 Q. But that is not what it says here. It</p> <p>21 says plaintiff -- sorry. You're right. Wrong</p> <p>22 plaintiff. Sorry. But what is not true here is</p> <p>23 that the payment was personally guaranteed by</p> <p>24 defendant?</p> <p>25 A. That is your opinion.</p>	<p style="text-align: right;">Page 215</p> <p>1 SUSSMAN</p> <p>2 A. I don't know.</p> <p>3 Q. You said before it was likely. Now</p> <p>4 you're changing it?</p> <p>5 MS. NIGRO: No. Where did he say it</p> <p>6 was likely? Go back.</p> <p>7 Q. I asked you, based upon what we talked</p> <p>8 about and you weigh all the information, and I</p> <p>9 said based upon it, it was likely that Mr. Russ</p> <p>10 was not in the country. You said based upon what</p> <p>11 I have seen, it was likely that Mr. Russ was not</p> <p>12 in the country. You want to change that?</p> <p>13 MS. NIGRO: Find it in the record,</p> <p>14 where that is his testimony.</p> <p>15 MR. ALTMAN: I don't have to do that.</p> <p>16 MS. NIGRO: You're asking him to change</p> <p>17 existing testimony.</p> <p>18 Q. I will ask the question again.</p> <p>19 Is it likely that Mr. Russ was not in</p> <p>20 the United States on March 26, 2001 based on all</p> <p>21 the information you have seen?</p> <p>22 A. I don't know.</p> <p>23 Q. Now you don't know?</p> <p>24 MS. NIGRO: Excuse me.</p> <p>25 A. I didn't know before and I don't know</p>
<p style="text-align: right;">Page 214</p> <p>1 SUSSMAN</p> <p>2 Q. You said before that you saw no</p> <p>3 authority that was granted to anyone allowing them</p> <p>4 to sign as personal guarantor for Mr. Russ,</p> <p>5 correct?</p> <p>6 A. Sorry. Can you repeat?</p> <p>7 Q. You said before you saw no document</p> <p>8 that Mr. Russ had given anyone else authority to</p> <p>9 sign as personal guarantor on his behalf, correct?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 A. I don't remember if I stated that. I</p> <p>12 think I did, but I would like to clarify that and</p> <p>13 state that -- what I stated previously, that</p> <p>14 there's indications in the file that these leases</p> <p>15 were authorized and that a good faith basis to</p> <p>16 pursue breach of contract claims are or is</p> <p>17 present.</p> <p>18 Q. That is a different issue. I asked</p> <p>19 you, was the -- you said before it is likely that</p> <p>20 Mr. Russ was out of the country.</p> <p>21 MS. NIGRO: That is not what he said</p> <p>22 before. That mischaracterizes his testimony.</p> <p>23 Q. Let's go through it again.</p> <p>24 Is it likely that Mr. Russ was not in</p> <p>25 the country on 3/26/2001?</p>	<p style="text-align: right;">Page 216</p> <p>1 SUSSMAN</p> <p>2 now.</p> <p>3 I think that in the context of the</p> <p>4 question posed, my response was, based on this</p> <p>5 information, it is likely, based on all the</p> <p>6 information, but based on the information known to</p> <p>7 me today, I don't know.</p> <p>8 Based on the information known to me at</p> <p>9 the time of the review, I don't recall. So my</p> <p>10 answer is I don't know.</p> <p>11 Q. Would it have been important for you to</p> <p>12 figure that out before you filed a lawsuit?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. It would be relevant.</p> <p>15 Q. But you didn't figure that out before</p> <p>16 you filed the lawsuit, did you?</p> <p>17 MS. NIGRO: Objection.</p> <p>18 A. I don't remember.</p> <p>19 Q. You don't remember. Okay.</p> <p>20 As you sit here today, it is a true</p> <p>21 statement that Mr. Russ personally guaranteed the</p> <p>22 lease?</p> <p>23 MS. NIGRO: Objection.</p> <p>24 A. As I sit here today, I maintain that</p> <p>25 there is a good faith basis for making this -- for</p>

54 (Pages 213 to 216)

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1 SUSSMAN
 2 signing this complaint.
 3 Q. I didn't ask you that question whether
 4 there was a good faith basis.
 5 I asked you, as you sit here today, is
 6 it your testimony that Mr. Russ personally
 7 guaranteed the leases?
 8 MS. NIGRO: Objection.
 9 A. If you mean did Mr. Russ physically
 10 take a pen and sign the lease agreement at issue,
 11 I don't know.
 12 Q. You didn't tell the court you didn't
 13 know that, did you, when you filed the complaint?
 14 You put that in here as a factual allegation.
 15 MS. NIGRO: You asked the question
 16 before as he sits here today.
 17 MR. ALTMAN: Never mind. Withdrawn.
 18 MS. NIGRO: The question asked before
 19 wasn't withdrawn.
 20 MR. ALTMAN: No. That is fine.
 21 MS. NIGRO: Which was as he sits here
 22 today.
 23 MR. ALTMAN: Okay.
 24 Q. I think I asked you this earlier. What
 25 information could Mr. Russ have provided to you --

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1 SUSSMAN
 2 MS. NIGRO: Objection.
 3 Q. -- to convince you that he was not in
 4 the United States on March 26, 2001?
 5 MS. NIGRO: Objection. I think you
 6 mean to Northern Leasing.
 7 MR. ALTMAN: No. To him before
 8 deciding to file the lawsuit.
 9 MS. NIGRO: That Mr. Russ provide
 10 things to him? Okay, go ahead with that
 11 question.
 12 Q. What information could he have provided
 13 to you to convince you he was not in the country
 14 on that day?
 15 A. A passport -- the information that was
 16 provided would have been helpful.
 17 Q. So if he showed you a passport that
 18 showed him outside of the United States and
 19 entering the United States afterwards along with a
 20 Visa, that should have been good enough, right?
 21 MS. NIGRO: Objection.
 22 A. It would have been good enough for
 23 what?
 24 Q. For you to determine he wasn't in the
 25 country.

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1 SUSSMAN
 2 A. Would have been helpful.
 3 Q. My question to you is, what would --
 4 what you're saying then is that you can't tell me
 5 what information somebody would need to provide to
 6 you that they were not in the country; is that
 7 what you're telling me?
 8 A. No. I mean, I -- you're a trial
 9 lawyer; I am not, but I would imagine there is all
 10 sorts of evidence, eyewitnesses and documentary
 11 evidence that would show where he was on a certain
 12 date. That is not the entire picture and issue
 13 that we are discussing.
 14 If you want me to answer the question,
 15 the question is, it is helpful. What would be
 16 enough, I answered it. It would be helpful.
 17 Q. Helpful --
 18 A. I don't know what would be enough.
 19 Q. Isn't it your job when you're assessing
 20 whether you should file a lawsuit to make those
 21 determinations?
 22 MS. NIGRO: Objection.
 23 A. No.
 24 Q. Is it your testimony that despite NLS
 25 and presumably you having been provided with an

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1 SUSSMAN
 2 affidavit of forgery along with passports that
 3 showed he was not in the country, none of that
 4 information was considered when you decided to
 5 proceed with this lawsuit?
 6 MS. NIGRO: Objection.
 7 A. None -- if you're saying that the
 8 information that we are looking at here that has
 9 been produced and provided to Northern Leasing by
 10 Mr. Russ would have been considered or should have
 11 been considered, no, I don't agree with that. It
 12 would have been relevant to my consideration in
 13 connection with my review of the file.
 14 MR. ALTMAN: This is Exhibit 130, Bates
 15 1050 through 1056.
 16 (Exhibit 130, Bates 1050 through 1056,
 17 marked for identification, as of this date.)
 18 Q. This is a summons and complaint along
 19 with, I believe, a judgment and an attorney
 20 affirmation, correct?
 21 A. Well, yes. It is a summons and a
 22 complaint and an application for a default
 23 judgment.
 24 Q. The affirmation --
 25 A. And an attorney affirmation.

55 (Pages 217 to 220)

<p style="text-align: right;">Page 221</p> <p>1 SUSSMAN</p> <p>2 Q. It is not signed, correct?</p> <p>3 A. Correct.</p> <p>4 Q. That may be just that there were</p> <p>5 multiple copies of this and this is just one that</p> <p>6 is not signed?</p> <p>7 A. Correct.</p> <p>8 Q. Did you, in fact, sign one of these?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. Presumably in connection with an</p> <p>11 application for a default judgment, I would have.</p> <p>12 Q. My question to you is, number 11, why</p> <p>13 would you have waived attorneys fees?</p> <p>14 A. On the application for judgment?</p> <p>15 Q. Yes.</p> <p>16 A. I found that pursuing attorneys fees on</p> <p>17 smaller dollar amounts was very time consuming and</p> <p>18 sometimes too difficult a hurdle to pursue on</p> <p>19 every occasion.</p> <p>20 MR. ALTMAN: This is Exhibit 131. This</p> <p>21 is Bates, I think, 992 through 996.</p> <p>22 (Exhibit 131, Bates 992 through 996,</p> <p>23 marked for identification, as of this date.)</p> <p>24 Q. Exhibit 131 is a -- I don't know</p> <p>25 exactly what it is but it was ultimately found to</p>	<p style="text-align: right;">Page 223</p> <p>1 SUSSMAN</p> <p>2 say that.</p> <p>3 A. I don't remember. It could be the</p> <p>4 case. I don't think we have seen it today.</p> <p>5 Q. You certainly signed in Exhibit 130</p> <p>6 that -- you represent that the defendant had not</p> <p>7 appeared or answered, correct?</p> <p>8 A. Correct.</p> <p>9 Q. It is not true though, is it?</p> <p>10 MS. NIGRO: Objection.</p> <p>11 A. It could be true. This answer is dated</p> <p>12 September 26, 2003. Let's see when the time to</p> <p>13 file the answer was --</p> <p>14 MS. NIGRO: The summons that you have</p> <p>15 is Exhibit 130.</p> <p>16 Q. On page 1053 is your statement for</p> <p>17 judgment, proof of default --</p> <p>18 A. No. I am trying to figure out in</p> <p>19 2004 -- I think in 2004 in the civil court, it was</p> <p>20 served and then filed. Give me a second.</p> <p>21 The recital on the proposed judgment</p> <p>22 states that service was completed on 9/2/03. So</p> <p>23 30 days after that is -- the answer was filed</p> <p>24 within the time to answer, but -- and I don't</p> <p>25 remember, but a likely explanation was that we --</p>
<p style="text-align: right;">Page 222</p> <p>1 SUSSMAN</p> <p>2 be an answer by Mr. Russ, correct, to the</p> <p>3 complaint of Northern Leasing?</p> <p>4 A. If I remember correctly, this was his</p> <p>5 answer he submitted pro se in response to the</p> <p>6 complaint. I am not sure if there are four of</p> <p>7 these or if he used one or all four. It looks</p> <p>8 like there are two index numbers on this answer,</p> <p>9 but I don't know if that is -- I can't say. It is</p> <p>10 an answer to at least one of the complaints.</p> <p>11 Q. The date of this is the 26th of</p> <p>12 September, 2003, correct?</p> <p>13 A. Where --</p> <p>14 Q. It was received by the civil court on</p> <p>15 that date?</p> <p>16 A. Yes.</p> <p>17 Q. Why did you get a default judgment</p> <p>18 against Mr. Russ when Mr. Russ answered?</p> <p>19 A. I don't remember -- is that correct,</p> <p>20 that Northern Leasing obtained a default judgment</p> <p>21 on all these cases?</p> <p>22 Q. At least on one of them we looked on.</p> <p>23 A. No. That was just an application. Was</p> <p>24 a default actually entered?</p> <p>25 MS. NIGRO: We have no documents that</p>	<p style="text-align: right;">Page 224</p> <p>1 SUSSMAN</p> <p>2 I wasn't provided with this answer in time. I</p> <p>3 wasn't aware that the answer had been filed.</p> <p>4 MS. NIGRO: Which file number are you</p> <p>5 referring to?</p> <p>6 Q. This is dated May 26, 2004, isn't it?</p> <p>7 MS. NIGRO: What?</p> <p>8 Q. Look at page 1053.</p> <p>9 MS. NIGRO: Which is a statement.</p> <p>10 Q. The undersigned affirms this statement</p> <p>11 to be true under the penalty of perjury?</p> <p>12 A. Correct.</p> <p>13 Q. That is way after --</p> <p>14 A. Correct, but I still would not have</p> <p>15 been aware if a copy wasn't provided to me that a</p> <p>16 answer was filed.</p> <p>17 This is a common problem in civil court</p> <p>18 particularly. Pro se's may not serve a copy on</p> <p>19 plaintiff. We wouldn't be aware that the answer</p> <p>20 has been filed.</p> <p>21 MR. ALTMAN: We will mark Exhibit 132,</p> <p>22 Bates number 1076 through 1087, copies of Mr.</p> <p>23 Russ's passport.</p> <p>24 (Exhibit 132, Bates 1076 through 1087,</p> <p>25 marked for identification, as of this date.)</p>

56 (Pages 221 to 224)

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1 SUSSMAN
 2 Q. Have you ever seen this before?
 3 A. I don't know.
 4 MS. NIGRO: Is this supposed to be a
 5 full copy of his passport?
 6 MR. ALTMAN: These are the pages out of
 7 NLS's files.
 8 MS. NIGRO: Your client provided it to
 9 NLS, so where is the rest of the passport?
 10 MR. ALTMAN: I don't know. I don't
 11 know that he was required to produce every
 12 page in his passport.
 13 MS. NIGRO: I am just asking. Saying
 14 something is incomplete in our file might mean
 15 that your guy didn't give it to us. So I am
 16 just asking.
 17 MR. ALTMAN: Exhibit 133, we will mark
 18 now, is Bates number 1039 through 1047.
 19 (Exhibit 133, Bates 1039 through 1047,
 20 marked for identification, as of this date.)
 21 Q. Have you seen this document before?
 22 A. Yes.
 23 Q. This is a letter to Mr. Russ offering
 24 to enter into a mutual settlement agreement
 25 concerning the leases, correct?

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1 SUSSMAN
 2 A. Yes.
 3 Q. This document was signed by Northern
 4 Leasing but it was not ever executed by Mr. Russ?
 5 MS. NIGRO: Objection.
 6 A. The agreement of mutual release?
 7 Q. Yes.
 8 A. I haven't seen an executed agreement.
 9 Q. The copy that is here is not executed?
 10 A. Correct.
 11 Q. You have never seen an executed
 12 agreement?
 13 A. Correct.
 14 Q. There are stipulations of
 15 discontinuance attached as part of this?
 16 A. Correct.
 17 Q. Those would have your signature on
 18 them, correct?
 19 A. Correct.
 20 Q. They would have been signed by Mr.
 21 Russ?
 22 A. Correct.
 23 Q. When you have a stipulation of
 24 discontinuance, that typically requires the
 25 signature of both parties?

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1 SUSSMAN
 2 A. Sure.
 3 Q. Otherwise, it is not a stipulation,
 4 correct?
 5 A. Correct.
 6 Q. Significant motion practice took place
 7 concerning the claims against Mr. Russ?
 8 A. Yes.
 9 Q. Did there come a time when all that
 10 motion practice was taking place with those claims
 11 that NLS filed another lawsuit against Rapid Cash?
 12 A. Yes.
 13 Q. Why didn't you name them as a plaintiff
 14 when you first sued Mr. Russ -- sorry, as a
 15 defendant?
 16 A. They -- often it is the case that the
 17 lessee defaults on a lease because they are no
 18 longer in business.
 19 Since they are not required to be a
 20 party because the guarantee is separate and not --
 21 they are not required to be joined, we as Northern
 22 Leasing is entitled to proceed directly against
 23 the guarantor, I found and I think the company
 24 agrees that it is more -- it makes more sense to
 25 proceed directly against the guarantor.

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1 SUSSMAN
 2 Q. Why wouldn't you proceed against both?
 3 MS. NIGRO: Objection. You're skating
 4 on his work product. I think he has a right
 5 to claim privilege to that.
 6 THE WITNESS: I am asserting that.
 7 Q. Why didn't you proceed against both in
 8 Melinda Serin's case?
 9 MS. NIGRO: Objection for the same
 10 reason.
 11 MR. ALTMAN: I think don't think there
 12 is any privilege with respect to Melinda
 13 Serin.
 14 MS. NIGRO: About what he was thinking
 15 when he filed a lawsuit against --
 16 MR. ALTMAN: That is correct.
 17 MS. NIGRO: Would you like to have to
 18 answer a question that asks what you were
 19 thinking when you decided to file a lawsuit?
 20 You don't think that is a lawyer's work
 21 product --
 22 MR. ALTMAN: That may be true, but your
 23 client listed Mr. Sussman as a person who was
 24 going to talk about these cases.
 25 MS. NIGRO: Right.

57 (Pages 225 to 228)

<p style="text-align: right;">Page 229</p> <p>1 SUSSMAN</p> <p>2 MR. ALTMAN: So there is no more</p> <p>3 privilege.</p> <p>4 MS. NIGRO: No, that doesn't mean that</p> <p>5 he can't ever claim privilege over anything.</p> <p>6 You know that.</p> <p>7 MR. ALTMAN: I think he can't claim</p> <p>8 privilege about any of the five plaintiffs</p> <p>9 associated in this case.</p> <p>10 THE WITNESS: That is ridiculous.</p> <p>11 MS. NIGRO: Judge Quinn didn't rule</p> <p>12 that Mr. Sussman's documents weren't</p> <p>13 privileged. He was reviewing them for the</p> <p>14 crime fraud exception just like he was</p> <p>15 recently reviewing our privilege documents for</p> <p>16 the same issue and weeded through ones which</p> <p>17 he felt were not subject to privilege and</p> <p>18 which were. If what you were saying was</p> <p>19 correct, nothing in this case could be</p> <p>20 withhold on the basis of privilege.</p> <p>21 MR. ALTMAN: Subsequent to Judge</p> <p>22 Quinn's rulings just last week, Northern</p> <p>23 Leasing on its own decided to list Mr. Sussman</p> <p>24 as a witness that they intended to call at</p> <p>25 trial.</p>	<p style="text-align: right;">Page 231</p> <p>1 SUSSMAN</p> <p>2 work product. I am not even the one saying it</p> <p>3 is my work product.</p> <p>4 MR. ALTMAN: Except that your client</p> <p>5 waived the privilege with respect to these</p> <p>6 plaintiffs.</p> <p>7 MS. NIGRO: Has that even been</p> <p>8 determined?</p> <p>9 I think I have given you a lot of</p> <p>10 leeway with respect to decisions made back and</p> <p>11 forth because I understand the argument you're</p> <p>12 making, but I don't think it is -- I don't</p> <p>13 think it is a blanket thing that they can</p> <p>14 never claim privilege as to any of these</p> <p>15 cases.</p> <p>16 If that were so, Judge Quinn's order of</p> <p>17 the 6th would have been different.</p> <p>18 MR. ALTMAN: Judge Quinn didn't know</p> <p>19 you had added him as a witness after that.</p> <p>20 MS. NIGRO: Judge Quinn knows the whole</p> <p>21 basis of your claim is allegedly bogus</p> <p>22 lawsuits.</p> <p>23 MR. ALTMAN: There is a difference</p> <p>24 between us taking Mr. Sussman's deposition and</p> <p>25 Northern Leasing deciding to add him as a --</p>
<p style="text-align: right;">Page 230</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: That's right. On the</p> <p>3 issues that are here.</p> <p>4 MR. ALTMAN: On the underlying claims</p> <p>5 of these cases. I am asking with respect to</p> <p>6 Melinda Serin, why --</p> <p>7 MS. NIGRO: I thought you were asking</p> <p>8 with respect to Judson --</p> <p>9 MR. ALTMAN: First I asked generally.</p> <p>10 You objected on privilege, but now with</p> <p>11 respect to these witnesses, I don't think you</p> <p>12 can make the same assertion with respect to</p> <p>13 these cases --</p> <p>14 MS. NIGRO: But Judson Russ is also one</p> <p>15 of those cases.</p> <p>16 MR. ALTMAN: I didn't ask it first with</p> <p>17 respect to Judson Russ --</p> <p>18 MS. NIGRO: Yeah, you did.</p> <p>19 MR. ALTMAN: We will start over.</p> <p>20 Q. Melinda Serin, why didn't you sue</p> <p>21 Melinda Serin and the corporate entity?</p> <p>22 A. I am issuing the same objection, same</p> <p>23 objection as Russ.</p> <p>24 Q. I didn't ask it with Russ.</p> <p>25 MS. NIGRO: He is saying that it is his</p>	<p style="text-align: right;">Page 232</p> <p>1 SUSSMAN</p> <p>2 to identify him under rule 26 and identify him</p> <p>3 as a witness they intend to call.</p> <p>4 MS. NIGRO: Show me the authority that</p> <p>5 says he can never claim work product, not</p> <p>6 attorney-client privilege. You're</p> <p>7 confusing the two.</p> <p>8 THE VIDEOGRAPHER: The time is 5:23</p> <p>9 p.m. We are going off the record.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: The time is now 5:25</p> <p>12 p.m. We are back on the record.</p> <p>13 MR. ALTMAN: Counsel and I had a</p> <p>14 discussion on this issue whether the</p> <p>15 information plaintiff seeks is privileged</p> <p>16 under work product. We can't agree to the</p> <p>17 topic and it didn't seem to be productive for</p> <p>18 us to continue the discussion.</p> <p>19 Hopefully, with agreement of defendant,</p> <p>20 plaintiff are just reserving our right to</p> <p>21 pursue this matter with the judge as opposed</p> <p>22 to asking the witness question after question</p> <p>23 for which they will object on the same</p> <p>24 privilege.</p> <p>25 Is that fair enough?</p>

58 (Pages 229 to 232)

<p style="text-align: right;">Page 233</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: If the question is why</p> <p>3 didn't you sue the entity versus why didn't</p> <p>4 you sue the guarantor, the answer is that</p> <p>5 would be correct for now.</p> <p>6 MR. ALTMAN: I may have asked other</p> <p>7 questions.</p> <p>8 MS. NIGRO: Then I suggest you ask</p> <p>9 those questions and I will raise my</p> <p>10 objections.</p> <p>11 Q. Did you discuss with anybody at</p> <p>12 Northern Leasing why you didn't sue the</p> <p>13 individuals and the -- Melinda Serin and Jim</p> <p>14 Cameron Doors?</p> <p>15 A. Specifically?</p> <p>16 Q. Yes.</p> <p>17 A. I don't recall.</p> <p>18 Q. Did you have any discussions with</p> <p>19 Northern Leasing for any of the plaintiffs in the</p> <p>20 Serin matter as to why you didn't also sue the</p> <p>21 business entity as well as the individual?</p> <p>22 A. I don't recall.</p> <p>23 Q. When you brought the suit against Rapid</p> <p>24 Cash directly, did you tell the judge in the</p> <p>25 actions against Mr. Russ personally that you had</p> <p style="text-align: right;">Page 234</p>	<p style="text-align: right;">Page 235</p> <p>1 SUSSMAN</p> <p>2 A. I don't know. I will take your</p> <p>3 representation.</p> <p>4 MS. NIGRO: Objection.</p> <p>5 Was it resolved?</p> <p>6 MR. ALTMAN: It was dismissed.</p> <p>7 MS. NIGRO: Dismissed.</p> <p>8 Q. It was after the default judgment,</p> <p>9 right?</p> <p>10 A. Again, I will take that -- I will take</p> <p>11 your representation.</p> <p>12 Q. Did you ever tell the judge in that</p> <p>13 matter at any time that you had received a default</p> <p>14 judgment against Rapid Cash?</p> <p>15 A. You just stated that the default</p> <p>16 judgment was obtained after the Russ --</p> <p>17 Q. No. The other way around. The default</p> <p>18 judgment in Russ was --</p> <p>19 A. Let's see.</p> <p>20 Q. -- before 2006.</p> <p>21 The decision and order dismissing the</p> <p>22 Russ case is dated December 4, 2006. The judgment</p> <p>23 was granted on May 25, 2006.</p> <p>24 At any time between May 25, 2006 when</p> <p>25 you got this default and the dismissal of the Russ</p> <p style="text-align: right;">Page 236</p>
<p>1 SUSSMAN</p> <p>2 also filed a suit against Rapid Cash?</p> <p>3 A. Do you have copy of the complaint?</p> <p>4 Q. Sure.</p> <p>5 MR. ALTMAN: We will mark it as Exhibit</p> <p>6 134.</p> <p>7 MS. NIGRO: You might have misspoken in</p> <p>8 the question.</p> <p>9 MR. ALTMAN: It is Bates 999 through</p> <p>10 1014.</p> <p>11 (Exhibit 134, Bates 999 through 1014,</p> <p>12 marked for identification, as of this date.)</p> <p>13 THE WITNESS: Can you read back the</p> <p>14 question?</p> <p>15 (Record read.)</p> <p>16 A. Are you going to ask it both ways?</p> <p>17 Q. Yes.</p> <p>18 A. I don't remember, but I am guessing --</p> <p>19 I don't think so.</p> <p>20 Q. Did you tell the judge -- the case</p> <p>21 against Russ --</p> <p>22 A. I take that back. I don't remember.</p> <p>23 Q. The case against Russ personally was</p> <p>24 resolved after the date you received a default</p> <p>25 judgment in Rapid Cash, correct?</p>	<p>1 SUSSMAN</p> <p>2 personal case, did you ever tell the judge that</p> <p>3 you had obtained a default judgment against Rapid</p> <p>4 Cash?</p> <p>5 A. I don't remember. If -- I don't</p> <p>6 remember. It is very likely that I would have.</p> <p>7 Q. Would it have been appropriate for you</p> <p>8 to have told the judge?</p> <p>9 MS. NIGRO: Objection.</p> <p>10 A. It may have been relevant and it is</p> <p>11 likely that it was discussed.</p> <p>12 Q. Would it be inappropriate to not have</p> <p>13 told the judge about the default judgment?</p> <p>14 MS. NIGRO: Objection.</p> <p>15 A. I don't want to answer that question.</p> <p>16 It depends in what context for what purpose.</p> <p>17 Q. At the time you were seeking to recover</p> <p>18 money from Mr. Russ, you had already had a</p> <p>19 judgment against Rapid Cash. Weren't you trying</p> <p>20 to double dip at that point?</p> <p>21 A. No, not at all.</p> <p>22 Q. You were seeking summary judgment</p> <p>23 against Mr. Russ, weren't you?</p> <p>24 A. I don't remember. I recall cross</p> <p>25 moving for summary judgment or moving for summary</p>

59 (Pages 233 to 236)

<p style="text-align: right;">Page 237</p> <p>1 SUSSMAN</p> <p>2 judgment.</p> <p>3 Q. And if summary granted had been</p> <p>4 granted, you might have had a judgment against Mr.</p> <p>5 Russ personally?</p> <p>6 A. Yes. I don't think that the dates are</p> <p>7 all -- all work out. It is going to take some</p> <p>8 time to sort out the chronology.</p> <p>9 MR. ALTMAN: We will mark the stuff and</p> <p>10 we will get it right.</p> <p>11 A. The Rapid Cash action, notice was</p> <p>12 provided to Mr. Chittur who was representing Mr.</p> <p>13 Russ. So there was no question about notice and</p> <p>14 that all parties being aware of what was going on.</p> <p>15 To the extent that you're trying to</p> <p>16 state that I deliberately concealed information</p> <p>17 from a judge, that is certainly not the case.</p> <p>18 This was full disclosure. This may not have been</p> <p>19 an opportunity to formally present it in the Russ</p> <p>20 case, but it certainly was circulated.</p> <p>21 Information was shared.</p> <p>22 MR. ALTMAN: I will mark this document</p> <p>23 as Exhibit 135 which is Bates number 920</p> <p>24 through 930. This is the memorandum of law in</p> <p>25 support of plaintiff's cross motion to lift</p>	<p style="text-align: right;">Page 239</p> <p>1 SUSSMAN</p> <p>2 MR. ALTMAN: In this motion that you</p> <p>3 signed two months after.</p> <p>4 A. Counsel, I don't know. I would have to</p> <p>5 read it, but there was no effort to conceal</p> <p>6 information. It is a public record. Parties were</p> <p>7 served. If it was not specifically brought to the</p> <p>8 attention of a judge in this motion, it was</p> <p>9 apparently not relevant to the issues being</p> <p>10 litigated at that very moment or relevant but not</p> <p>11 -- I didn't see it important to point it out in</p> <p>12 these papers. But it is not the case that I was</p> <p>13 trying to hide information. The information was</p> <p>14 not concealed from anybody.</p> <p>15 Q. First of all, it was contested as to</p> <p>16 whether Rapid Cash was ever served correctly,</p> <p>17 right?</p> <p>18 A. I don't remember that.</p> <p>19 MS. NIGRO: Did you have a document</p> <p>20 that shows that?</p> <p>21 A. But I do have the decision granting the</p> <p>22 judgment, Judge Miller Gross Matos, M A T O S.</p> <p>23 Q. That is not the same judge you had the</p> <p>24 personal cases against Russ?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 238</p> <p>1 SUSSMAN</p> <p>2 the automatic stay of discovery and in</p> <p>3 opposition to defendants' motion for summary</p> <p>4 judgment.</p> <p>5 (Exhibit 135, Bates number 920 through</p> <p>6 930, marked for identification, as of this</p> <p>7 date.)</p> <p>8 Q. Your name is on the front?</p> <p>9 A. Yes.</p> <p>10 Q. You signed it on the back?</p> <p>11 A. Yes.</p> <p>12 Q. It is dated July 17, 2006, correct?</p> <p>13 A. Correct.</p> <p>14 Q. I think it is on the second page, one</p> <p>15 thing I want to ask you about under statement of</p> <p>16 facts, it starts the court respectfully; do you</p> <p>17 see that?</p> <p>18 A. Yes.</p> <p>19 Q. That was attached at the same time as</p> <p>20 this.</p> <p>21 My first question is, is there any</p> <p>22 mention anywhere in this motion dated two months</p> <p>23 after you obtained judgment that you had obtained</p> <p>24 full judgment against Rapid Cash?</p> <p>25 MS. NIGRO: You mean in this document?</p>	<p style="text-align: right;">Page 240</p> <p>1 SUSSMAN</p> <p>2 MR. ALTMAN: We will mark these for</p> <p>3 now. Can we get copies done because these are</p> <p>4 out of the actual file?</p> <p>5 Q. First of all, was Rapid Cash being</p> <p>6 represented by Mr. Chittur at the time of the</p> <p>7 default motion?</p> <p>8 A. I believe so, but I don't remember. I</p> <p>9 assume -- I think I assumed they were.</p> <p>10 MR. ALTMAN: I will mark as Exhibit 136</p> <p>11 two e-mails, one dated June 18, 2006 and the</p> <p>12 other one dated August 1, 2006 between Joseph</p> <p>13 Sussman and Mr. Chittur concerning this</p> <p>14 matter.</p> <p>15 I will see if these refresh your</p> <p>16 recollection and then afterwards -- can you</p> <p>17 make the photocopies now?</p> <p>18 MS. NIGRO: Yes.</p> <p>19 THE VIDEOGRAPHER: The time is 5:38</p> <p>20 p.m. We are off the record.</p> <p>21 (Discussion off the record.)</p> <p>22 THE VIDEOGRAPHER: The time is 5:45</p> <p>23 p.m. We are back on the record.</p> <p>24 (Exhibit 136, e-mails dated June 18,</p> <p>25 2006 and August 1, 2006 between Joseph Sussman</p>

60 (Pages 237 to 240)

<p style="text-align: right;">Page 241</p> <p>1 SUSSMAN</p> <p>2 and Mr. Chittur, marked for identification, as</p> <p>3 of this date.)</p> <p>4 Q. The e-mails are marked as Exhibit 136.</p> <p>5 Mr. Sussman, do you recall the e-mails</p> <p>6 in Exhibit 136?</p> <p>7 A. No, but I see it now.</p> <p>8 Q. You did send a response back to</p> <p>9 Mr. Chittur?</p> <p>10 A. Yes.</p> <p>11 Q. Is there any reason you would suspect</p> <p>12 these e-mails are not real?</p> <p>13 A. No.</p> <p>14 Q. Does this refresh your recollection</p> <p>15 that there was some question as to whether the</p> <p>16 corporation had been properly served?</p> <p>17 A. It refreshes my recollection that</p> <p>18 Andrey Strutinskiy sent me an e-mail stating the</p> <p>19 follow -- stating what is stated here.</p> <p>20 Q. What happened to the Rapid Cash</p> <p>21 default?</p> <p>22 A. What happened to it?</p> <p>23 Q. Yes.</p> <p>24 A. What do you mean?</p> <p>25 Q. Have you been paid on it? Is it still</p>	<p style="text-align: right;">Page 243</p> <p>1 SUSSMAN</p> <p>2 Q. Bates 952 through 960 is Exhibit 137.</p> <p>3 You will find if you go to the bottom</p> <p>4 of page 959 --</p> <p>5 A. Yes.</p> <p>6 Q. The declaration is not part of your</p> <p>7 motion, right?</p> <p>8 A. It certainly is.</p> <p>9 MS. NIGRO: It is referenced.</p> <p>10 A. What do you mean?</p> <p>11 Q. It is referenced, but it is not in the</p> <p>12 text of your motion?</p> <p>13 A. Counsel, the affidavit is the most</p> <p>14 integral part of the motion. Without the</p> <p>15 affidavit, there is no notion.</p> <p>16 Q. Please answer the question.</p> <p>17 A. That is the answer.</p> <p>18 Q. Is it contained within the motion</p> <p>19 itself?</p> <p>20 A. Yes.</p> <p>21 Q. Not a reference to the declaration --</p> <p>22 let's be very precise.</p> <p>23 MS. NIGRO: Do you mean the memorandum</p> <p>24 of law?</p> <p>25 Q. In the words of memorandum of law, the</p>
<p style="text-align: right;">Page 242</p> <p>1 SUSSMAN</p> <p>2 hanging out there? Has it been vacated?</p> <p>3 A. I --</p> <p>4 MS. NIGRO: When you say you have been</p> <p>5 paid --</p> <p>6 A. I don't remember. Is it in this</p> <p>7 e-mail?</p> <p>8 Q. No. I am asking if you know what the</p> <p>9 status of that default judgment is.</p> <p>10 A. To the best of my recollection, it is</p> <p>11 still standing.</p> <p>12 Q. Have you done anything to collect on</p> <p>13 it?</p> <p>14 A. I don't remember. I may have, but I</p> <p>15 don't remember.</p> <p>16 I also vaguely recalled during the</p> <p>17 break actually putting it in a footnote or perhaps</p> <p>18 it is in other documents submitted to the court.</p> <p>19 Q. That is what I wanted to bring up. It</p> <p>20 is actually mentioned in a footnote which is the</p> <p>21 declaration of Sara Krieger which I will mark as</p> <p>22 the next exhibit?</p> <p>23 MR. ALTMAN: Mark Exhibit 137.</p> <p>24 (Exhibit 137, Bates 952 through 960,</p> <p>25 marked for identification, as of this date.)</p>	<p style="text-align: right;">Page 244</p> <p>1 SUSSMAN</p> <p>2 four corners of that memorandum of law, is there</p> <p>3 any mention of this other lawsuit?</p> <p>4 A. Counsel, in New York, the memorandum of</p> <p>5 law does not become part of the appellate record</p> <p>6 but the affidavits do.</p> <p>7 The affidavit is the more important</p> <p>8 document here.</p> <p>9 Q. Please answer my question.</p> <p>10 A. The answer is yes --</p> <p>11 Q. In the four corners --</p> <p>12 A. It references the affidavit in</p> <p>13 memorandum of law.</p> <p>14 Q. I didn't ask references --</p> <p>15 A. It is the statement of fact. It is the</p> <p>16 statement of facts of the --</p> <p>17 Q. Mr. Sussman, I know it is late in the</p> <p>18 day --</p> <p>19 MS. NIGRO: Don't do that. Stop acting</p> <p>20 like he is tired and he doesn't remember. He</p> <p>21 is telling you his answer.</p> <p>22 Q. It is your testimony ---</p> <p>23 MS. NIGRO: The question was the</p> <p>24 motion.</p> <p>25 Q. The four corners of Exhibit 135</p>

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1 SUSSMAN
2 contains the language that there is another
3 lawsuit?
4 A. In the four corners of Exhibit 135 is
5 contained a reference to the -- there is a
6 statement of facts. Every memorandum of law is
7 supposed to have a statement of facts. I think
8 that is out of CPLR. If not, it is common
9 practice.
10 My statement of facts of my memorandum
11 of law is the affidavit of Sara Krieger. That is
12 what it is.
13 Q. Just answer my question.
14 A. The answer is yes. The answer is yes.
15 Q. Let's be precise. Physically on the
16 papers that comprise Exhibit 135, are those words
17 there that there is another lawsuit?
18 A. I will let you have this one. Yes, it
19 is not there. It is not in this --
20 Q. Thank you. That is all I was asking.
21 MS. NIGRO: Keith, your question was
22 whether or not it was in the motion and the
23 answer was yes. You then changed it to
24 memorandum of law. You have less than an hour
25 with this witness left.

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1 SUSSMAN
2 Q. All right. Let's go.
3 MS. NIGRO: Are you kidding me?
4 Q. Would you go to number 35 in the
5 Krieger declaration.
6 A. Number what?
7 Q. Point 35 -- wait a minute. Go to 953
8 for a second, page 953.8.
9 A. Paragraph 8?
10 Q. I want you to go to the last sentence
11 of point 28. It says, the verifier will also
12 confirm the monthly payment plus tax and it puts
13 in parens, loss and damage waiver fee if
14 applicable, and once the lease commences, the
15 lessee's obligations are irrevocable.
16 A. Yes.
17 Q. We looked at verification forms and
18 none of them had anything about the loss damage
19 waiver, correct?
20 A. Yes.
21 MS. NIGRO: You mean the verification
22 forms you have shown him today?
23 MR. ALTMAN: Yes.
24 A. I stated earlier that the verification
25 form itself does not have a direct reference, but

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1 SUSSMAN
2 that doesn't mean that the verification process
3 does not include a question about loss and damage
4 waiver.
5 Q. Does it?
6 A. I have stated that in the past and it
7 has been stated.
8 Q. Number 16, it says, each agreement
9 provides for Rapid Cash to make basic monthly
10 payments in the amount of \$59 plus applicable
11 taxes. A loss damage waiver fee --
12 A. Where are you?
13 Q. Number 16.
14 A. Yes.
15 Q. Each agreement provides for Rapid Cash
16 to make basic monthly lease payments to NLS in the
17 amount of \$59 plus applicable taxes and a loss and
18 damage waiver fee.
19 A. Yes.
20 Q. How come it doesn't qualify that,
21 unless insurance was provided?
22 A. Because the word applicable modifies
23 loss and damage waiver fee as well.
24 Q. No --
25 A. That is my understanding of it and I

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1 SUSSMAN
2 have what to do with this affidavit.
3 Q. You're saying the plus applicable
4 taxes, it is -- so applicable applies to loss
5 damage waiver as well as taxes?
6 A. Yes.
7 Q. In 21 --
8 A. This is Sara Krieger's --
9 Q. It starts, attached hereto is a fax
10 letter from Mr. Russ authorizing -- and then it
11 goes on. Is that what it says?
12 A. Yes.
13 Q. That is not what it actually says. It
14 says for the Scan Check services.
15 A. The words are different. Check cashing
16 services are not the same words as Scan Check,
17 that is correct.
18 Q. Mr. Magyari did not authorize -- if Mr.
19 Russ actually gave that authorization to Magyari,
20 he didn't authorize Mr. Magyari to make all
21 confirmations related to the check cashing
22 services for Rapid Cash which is very different,
23 isn't it? That is the business of the company.
24 What you're saying there is that
25 Mr. Magyari had authority to do anything on behalf

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<p style="text-align: right;">Page 249</p> <p>1 SUSSMAN</p> <p>2 of Rapid Cash.</p> <p>3 A. Let's back up.</p> <p>4 Are you asking me to explain my</p> <p>5 understanding about this paragraph 21?</p> <p>6 Q. You wrote it, right?</p> <p>7 A. I drafted the affidavit.</p> <p>8 Q. So you basically drafted that language,</p> <p>9 right?</p> <p>10 A. Okay.</p> <p>11 Q. My question to you is, is that related</p> <p>12 to check cashing services for Rapid Cash -- what</p> <p>13 is the business of Rapid Cash?</p> <p>14 A. I believe they are a check cashing</p> <p>15 stores.</p> <p>16 Q. What you have said here,</p> <p>17 notwithstanding what the document says, is that</p> <p>18 Magyari had authority to do everything related to</p> <p>19 check cashing services which is the entire</p> <p>20 business of Rapid Cash, right? It is imprecise?</p> <p>21 A. The question is imprecise.</p> <p>22 MS. NIGRO: Objection.</p> <p>23 A. That doesn't seem like a reasonable --</p> <p>24 it says here that Mr. Russ -- and I will read what</p> <p>25 it says. Then you draw your own conclusion what</p>	<p style="text-align: right;">Page 251</p> <p>1 SUSSMAN</p> <p>2 Q. Taking what you just said there, if you</p> <p>3 pull Exhibit 121, the company referred to -- is it</p> <p>4 Rapid Cash Title Loans, isn't it?</p> <p>5 A. Yes.</p> <p>6 Q. That is not Rapid Cash Advance, is it?</p> <p>7 A. I don't know -- I understand that it is</p> <p>8 not the same name, but I don't know what was</p> <p>9 intended because there were a variety of different</p> <p>10 corporate names and it seemed -- so I would be</p> <p>11 speculating, but suffice to say that it could have</p> <p>12 very well been referring to Rapid Cash Advances,</p> <p>13 Inc.</p> <p>14 Q. Don't you think that something that</p> <p>15 supposedly gives authority to somebody to enter</p> <p>16 into agreements is supposed to be construed pretty</p> <p>17 strictly?</p> <p>18 A. Yes.</p> <p>19 Q. You don't even know that this authority</p> <p>20 applies to any of the companies under which</p> <p>21 Mr. Magyari signed the leases, do you?</p> <p>22 A. I have an opinion about what this</p> <p>23 document is purporting to do and I stated that.</p> <p>24 Q. You think that your opinion of what the</p> <p>25 document is stated to do trumps the plain language</p>
<p style="text-align: right;">Page 250</p> <p>1 SUSSMAN</p> <p>2 it means.</p> <p>3 Attached hereto as Exhibit F is a fax</p> <p>4 letter from Mr. Russ authorizing Daniel Magyari to</p> <p>5 make all confirmations related to the check</p> <p>6 cashing services for Rapid Cash.</p> <p>7 Q. Rapid Cash's business is check cashing</p> <p>8 services, right?</p> <p>9 A. I think so.</p> <p>10 Q. Isn't it a fair reading of that that</p> <p>11 Mr. Magyari had authority to do anything with</p> <p>12 respect to Rapid Cash?</p> <p>13 A. No.</p> <p>14 MS. NIGRO: I will object because when</p> <p>15 you're referring to Rapid Cash, we have</p> <p>16 established that there are four entities, one</p> <p>17 of which is not even titled Rapid Cash.</p> <p>18 When you're asking these questions --</p> <p>19 can we be specific?</p> <p>20 Q. You certainly say -- you said Rapid</p> <p>21 Cash and not the other accounts, correct?</p> <p>22 A. Rapid Cash is defined in this affidavit</p> <p>23 as Rapid Cash Advances, Inc.</p> <p>24 MS. NIGRO: I just wanted to know which</p> <p>25 Rapid Cash we were referring to.</p>	<p style="text-align: right;">Page 252</p> <p>1 SUSSMAN</p> <p>2 of the document?</p> <p>3 A. No. I am not stating that.</p> <p>4 I am merely stating what might form a</p> <p>5 basis for recommending and taking legal action on</p> <p>6 an account referred to me by Northern Leasing.</p> <p>7 Q. But taking what you have said is, that</p> <p>8 document does not grant authority to Rapid Cash</p> <p>9 Advance, does it?</p> <p>10 A. I don't agree with that statement.</p> <p>11 (Witness confers with counsel.)</p> <p>12 Q. Mr. Sussman, what did counsel just</p> <p>13 whisper to you?</p> <p>14 MS. NIGRO: I did whisper something to</p> <p>15 him; I am allowed to. You and Mr. Strutinskiy</p> <p>16 have been whispering --</p> <p>17 MR. ALTMAN: He is a witness. He is</p> <p>18 being questioned.</p> <p>19 MS. NIGRO: I am his lawyer. I am</p> <p>20 allowed to confer with him.</p> <p>21 A. I didn't hear what she said. That is</p> <p>22 my answer.</p> <p>23 Q. Go to paragraph 35.</p> <p>24 MS. NIGRO: For the record, Mr. Chittur</p> <p>25 does the same thing with his depositions of</p>

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<p style="text-align: right;">Page 253</p> <p>1 SUSSMAN</p> <p>2 plaintiffs. So I don't understand what you're</p> <p>3 objecting to.</p> <p>4 Q. Point 35 says, on or about November 19,</p> <p>5 2002 after receiving the affidavit of forgery from</p> <p>6 Mr. Russ, NLS referred the matter to Mr. Joseph</p> <p>7 Rogers of its risk management department for</p> <p>8 review.</p> <p>9 A. It states that.</p> <p>10 Q. Who is Mr. Rogers?</p> <p>11 A. It is risk management department.</p> <p>12 Q. Do you know who he is?</p> <p>13 A. I know -- I think I recall his face.</p> <p>14 Q. Did you have a conversation with him</p> <p>15 concerning the forgery claim?</p> <p>16 A. Not to my recollection.</p> <p>17 Q. Number 36, can you tell me where Mr.</p> <p>18 Rogers determined that the signature on the leases</p> <p>19 were genuine?</p> <p>20 A. That is a trick question. What it</p> <p>21 states here is that Mr. Rogers determined that</p> <p>22 termination of the lease was not warranted because</p> <p>23 of NLS communication between the parties</p> <p>24 reflecting Rapid Cash's full awareness of the</p> <p>25 leases including Rapid Cash's repeated and</p>	<p style="text-align: right;">Page 255</p> <p>1 SUSSMAN</p> <p>2 earlier that there was a cost benefit analysis</p> <p>3 that goes into handwriting experts. I don't</p> <p>4 know if that applies here.</p> <p>5 Q. Did that apply in this case?</p> <p>6 A. Forget about the privilege for a</p> <p>7 moment. That would still be the case. An expert</p> <p>8 -- a handwriting expert is expensive and also not</p> <p>9 conclusive particularly when being litigated.</p> <p>10 In other words, if it was just a</p> <p>11 question of making my own assessment and assuming</p> <p>12 the cost issue wasn't present, it is helpful, but</p> <p>13 as you well know, it certainly won't decide the</p> <p>14 issue for everybody.</p> <p>15 So that would have been a litigation --</p> <p>16 a strategic decision in terms of the litigation.</p> <p>17 MR. ALTMAN: I will mark Exhibit 138 --</p> <p>18 by the way, before we do that.</p> <p>19 Q. You were going to grant Mr. Russ</p> <p>20 personally -- not you but NLS was going to give</p> <p>21 Mr. Russ personally a release. We talked about</p> <p>22 that before?</p> <p>23 A. I think from what I remember from those</p> <p>24 documents, there was an effort between the parties</p> <p>25 to try to settle all claims.</p>
<p style="text-align: right;">Page 254</p> <p>1 SUSSMAN</p> <p>2 consecutive pages without voicing concern, all the</p> <p>3 while maintaining possession of NLS's equipment.</p> <p>4 Q. Does it say in there that he determined</p> <p>5 that the documents were not forged?</p> <p>6 A. It doesn't say those words in that</p> <p>7 paragraph.</p> <p>8 Q. In fact, in paragraph 39, it states</p> <p>9 that, without further expert handwriting analysis</p> <p>10 and disclosure from defendant and NLS, it can't be</p> <p>11 conclusively determined if defendant himself</p> <p>12 affixed his signature to the lease agreements.</p> <p>13 A. Correct.</p> <p>14 Q. But you never determined whether he had</p> <p>15 actually signed that agreement, did you?</p> <p>16 A. Me myself, Joseph Sussman?</p> <p>17 Q. Yes.</p> <p>18 A. That is correct.</p> <p>19 Q. You never engaged an expert to do that</p> <p>20 either?</p> <p>21 A. Not to my knowledge.</p> <p>22 Q. Why not?</p> <p>23 A. I think that that information is also</p> <p>24 privileged information, work product.</p> <p>25 MS. NIGRO: The witness testified</p>	<p style="text-align: right;">Page 256</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: You're referring to Exhibit</p> <p>3 133.</p> <p>4 MR. ALTMAN: That is fine.</p> <p>5 Q. Did you intend on going and suing Rapid</p> <p>6 Cash after you received the release from Mr. Russ?</p> <p>7 A. I don't remember. I don't -- I think</p> <p>8 this release would have covered claims. I don't</p> <p>9 remember what my intention was. I don't think so.</p> <p>10 Q. The fact that you also sued Mr. Russ</p> <p>11 and then separately sued Rapid Cash, that didn't</p> <p>12 seem to cause a problem, correct?</p> <p>13 A. A problem for what?</p> <p>14 Q. That you filed two different lawsuits</p> <p>15 with two different judges seeking to recover the</p> <p>16 same funds?</p> <p>17 A. It didn't --</p> <p>18 MS. NIGRO: Objection.</p> <p>19 A. -- cause a problem for who? For me?</p> <p>20 Q. Yes.</p> <p>21 A. Because -- why --</p> <p>22 Q. Why didn't you join -- you said you</p> <p>23 would consent to join Rapid Cash.</p> <p>24 Why didn't you just put Rapid Cash when</p> <p>25 you filed those lawsuits? Instead of doing that,</p>

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<p style="text-align: right;">Page 257</p> <p>1 SUSSMAN</p> <p>2 why didn't you add Rapid Cash into the existing</p> <p>3 lawsuits?</p> <p>4 MS. NIGRO: This might go back to the</p> <p>5 whole work product argument we had earlier.</p> <p>6 MR. ALTMAN: Exhibit 138 is Bates 1031</p> <p>7 through 1037.</p> <p>8 (Exhibit 138, Bates 1031 through 1037,</p> <p>9 marked for identification, as of this date.)</p> <p>10 Q. I won't ask you questions really about</p> <p>11 this, other than this is a copy of the call log,</p> <p>12 the activity log and the payment history for the</p> <p>13 Russ account, correct?</p> <p>14 A. For which, all of them or one of them?</p> <p>15 Q. I think it is for one of the leases.</p> <p>16 A. Yes.</p> <p>17 Q. You would have had access to these</p> <p>18 materials when you filed the Russ lawsuit,</p> <p>19 correct?</p> <p>20 A. I think so.</p> <p>21 Q. Was it a strategy of you and NLS to</p> <p>22 subject defendants in lawsuits brought by NLS to</p> <p>23 significant expenses associated with defending</p> <p>24 those lawsuits?</p> <p>25 MS. NIGRO: Objection.</p>	<p style="text-align: right;">Page 259</p> <p>1 SUSSMAN</p> <p>2 A. Yes.</p> <p>3 Q. First request for documents.</p> <p>4 A. Yes.</p> <p>5 Q. And there is no request for</p> <p>6 interrogatories.</p> <p>7 You're asking for all merchant credit</p> <p>8 card processing statements for March 1, 2001 until</p> <p>9 the present day concerning four different</p> <p>10 companies, correct?</p> <p>11 A. Correct.</p> <p>12 Q. All documents and communications</p> <p>13 concerning checks against Scan Check or other</p> <p>14 check verification services?</p> <p>15 A. Correct.</p> <p>16 Q. Do you think this kind of -- we can go</p> <p>17 on for 22 different document requests. Do you</p> <p>18 think that is an appropriate level of discovery in</p> <p>19 a lawsuit to recover lease payments?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 A. I thought it was appropriate in this</p> <p>22 case.</p> <p>23 Q. You didn't want to get a handwriting</p> <p>24 expert, but you had no trouble inflicting</p> <p>25 significant expenses upon the plaintiffs, correct</p>
<p style="text-align: right;">Page 258</p> <p>1 SUSSMAN</p> <p>2 You can answer.</p> <p>3 A. No.</p> <p>4 Q. In how many of your lawsuits filed on</p> <p>5 behalf of NLS did you notice the deposition of the</p> <p>6 plaintiff in New York?</p> <p>7 MS. NIGRO: You mean defendants --</p> <p>8 Q. Deposition of the defendant.</p> <p>9 A. I don't know the number. Very small</p> <p>10 percentage.</p> <p>11 Q. In how many of them did you send out</p> <p>12 demands for interrogatories?</p> <p>13 A. I don't know how many.</p> <p>14 Q. A large percentage, a small percentage?</p> <p>15 A. Small percentage.</p> <p>16 Q. In how many did you send out discovery</p> <p>17 demands?</p> <p>18 A. Same answer.</p> <p>19 Q. I will hand you Exhibit 139 which is</p> <p>20 Bates number Sussman 339 through 345.</p> <p>21 (Exhibit 139, Bates number Sussman 339</p> <p>22 through 345, marked for identification, as of</p> <p>23 this date.)</p> <p>24 Q. This is for Mr. Russ a notice for</p> <p>25 deposition, a notice for New York, correct?</p>	<p style="text-align: right;">Page 260</p> <p>1 SUSSMAN</p> <p>2 -- upon the defendant --</p> <p>3 MS. NIGRO: Objection.</p> <p>4 A. Not correct. I actually don't recall</p> <p>5 -- counsel can tell us if we actually received any</p> <p>6 documents in response to the demands.</p> <p>7 Q. The case was dismissed, wasn't it?</p> <p>8 A. Yes.</p> <p>9 Q. But you were certainly asking for it</p> <p>10 and it certainly -- certainly, you didn't seem to</p> <p>11 be concerned about what costs you would make the</p> <p>12 plaintiffs go through, correct?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. That wasn't my intention.</p> <p>15 Q. Did you consider the proportionality of</p> <p>16 your requests in light of the dollar amounts at</p> <p>17 stake?</p> <p>18 MS. NIGRO: Objection.</p> <p>19 A. It seemed to me based on Judson Russ's</p> <p>20 counsel's demand -- settlement demand, settle</p> <p>21 their claims or counterclaims, that this case was</p> <p>22 worth a heck of a lot of money. So in that</p> <p>23 context, it was entirely appropriate.</p> <p>24 Q. You made that same kind of demands to</p> <p>25 other of the Serin plaintiffs, didn't you?</p>

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<p style="text-align: right;">Page 261</p> <p>1 SUSSMAN</p> <p>2 MS. NIGRO: Objection.</p> <p>3 A. I don't know if that is correct -- some</p> <p>4 of them. Tom Smith.</p> <p>5 Q. And I think Mr. Lim.</p> <p>6 A. I don't think Lim went to discovery.</p> <p>7 MS. NIGRO: Can you please show him the</p> <p>8 documents.</p> <p>9 MR. ALTMAN: I will. Exhibit 140 is</p> <p>10 Sussman 644 through 650.</p> <p>11 (Exhibit 140, Sussman 644 through 650,</p> <p>12 marked for identification, as of this date.)</p> <p>13 Q. This is the notice of deposition and</p> <p>14 request for document of Mr. Lim, correct?</p> <p>15 A. Yes.</p> <p>16 Q. This is dated even before the Serin</p> <p>17 lawsuit was filed?</p> <p>18 A. Is that correct? I don't know.</p> <p>19 MS. NIGRO: The Serin lawsuit was filed</p> <p>20 twice.</p> <p>21 Q. It was filed originally in March of</p> <p>22 2006, correct?</p> <p>23 MS. NIGRO: I don't know.</p> <p>24 MR. ALTMAN: I believe --</p> <p>25 MS. NIGRO: I am just saying I don't</p>	<p style="text-align: right;">Page 263</p> <p>1 SUSSMAN</p> <p>2 Leasing?</p> <p>3 A. Yes, I do.</p> <p>4 Q. What do you that would be for a</p> <p>5 plaintiff coming from California?</p> <p>6 A. I think that for a plaintiff who would</p> <p>7 like to resolve a dispute, it would be very</p> <p>8 efficient to engage in reasonable settlement</p> <p>9 discussions which did not take place, in my</p> <p>10 opinion, because of Mr. Chittur's law firm's</p> <p>11 interference with that effort.</p> <p>12 Q. Do you ever use the cost of coming to</p> <p>13 New York to defend in your settlement discussions</p> <p>14 with other lessees?</p> <p>15 A. Counsel, counsel for lessees?</p> <p>16 Q. No.</p> <p>17 A. Just directly?</p> <p>18 Q. Yes.</p> <p>19 A. If the question is in a discussion that</p> <p>20 I would have with a pro se defendant, would that</p> <p>21 -- it is possible that that could come up in</p> <p>22 conversations? It is possible. Do I recall</p> <p>23 specific conversation? No.</p> <p>24 Q. Does Ms. Krieger verify all of the</p> <p>25 complaints you send out?</p>
<p style="text-align: right;">Page 262</p> <p>1 SUSSMAN</p> <p>2 know.</p> <p>3 Q. If that is true, November 22, 2005 is</p> <p>4 before that date.</p> <p>5 A. Correct.</p> <p>6 MS. NIGRO: October?</p> <p>7 Q. The deposition was noticed --</p> <p>8 MS. NIGRO: Sorry. I thought you were</p> <p>9 talking about the demands.</p> <p>10 Q. At any time did you have discussions</p> <p>11 with NLS over how much it costs a defendant to</p> <p>12 defend a lawsuit brought by you?</p> <p>13 MS. NIGRO: Objection.</p> <p>14 A. In the context of the Long Lim case?</p> <p>15 Q. In the context of any of the Serin</p> <p>16 plaintiffs.</p> <p>17 A. I don't recall.</p> <p>18 Q. Have you had that discussion at all</p> <p>19 with respect to any suits that Northern Leasing</p> <p>20 has filed?</p> <p>21 MS. NIGRO: Objection.</p> <p>22 A. I also don't recall.</p> <p>23 Q. Do you have some thoughts on how</p> <p>24 expensive it might be for a person to come to New</p> <p>25 York to defend a lawsuit filed by Northern</p>	<p style="text-align: right;">Page 264</p> <p>1 SUSSMAN</p> <p>2 A. Yes.</p> <p>3 Q. Who else would verify them?</p> <p>4 A. Different individuals have verified</p> <p>5 complaints, different stages, different periods of</p> <p>6 time.</p> <p>7 Q. Are they all corporate officers?</p> <p>8 A. I know Ms. Krieger is.</p> <p>9 Q. As part of their verification, do they</p> <p>10 review the file in the leasing system themselves?</p> <p>11 A. I don't think they -- she would review</p> <p>12 each individual file herself, no.</p> <p>13 Q. What does whoever signs the</p> <p>14 verification do to verify?</p> <p>15 A. That person would be fully aware of the</p> <p>16 policies and procedures of the company and the</p> <p>17 records maintained in the system and how they</p> <p>18 would be followed so that -- which is the only</p> <p>19 basis of information the company has to form an</p> <p>20 opinion or to be able to verify information as it</p> <p>21 states in the verification of the complaint.</p> <p>22 Q. For example, a verification that you</p> <p>23 put in the Serin case says that Sara Krieger</p> <p>24 affirms under penalties of perjury and says that</p> <p>25 she is the vice president of plaintiff, Northern</p>

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1 SUSSMAN
 2 Leasing; that she has read the verified complaint
 3 and knows the contents thereof; that the same is
 4 true to her own knowledge except as to those
 5 matters therein stated to be upon information and
 6 belief. As to those matters, she believes them to
 7 be true.
 8 MS. NIGRO: Number?
 9 MR. ALTMAN: That was Exhibit 116.
 10 Q. Is that generally what the verification
 11 would say?
 12 A. Yes.
 13 Q. Does that imply that that person has as
 14 much knowledge about the underlying facts of the
 15 case as you do?
 16 A. I don't know. My knowledge might be
 17 more hands-on than the person verifying, but the
 18 information would be the same.
 19 Q. For example, would that person who
 20 signs the verification be presumed that they have
 21 reviewed the call -- the activity log for that
 22 case?
 23 A. No.
 24 Q. How would they be verified -- then what
 25 are they verifying?

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1 SUSSMAN
 2 A. I stated that already.
 3 Based on the same information that I
 4 reviewed, in order for a lease to proceed to the
 5 point where it is referred to my office for
 6 collection, there are policies and procedures in
 7 place that --
 8 Q. Okay.
 9 A. -- and based on the information
 10 maintained by Northern Leasing so that -- based on
 11 my understanding, Northern Leasing's own policies
 12 and procedures would provide a sufficient basis
 13 for the verifier to verify the contents are true.
 14 Q. Do you have that policy -- not
 15 necessarily in your possession here but back at
 16 your office, do you have those policies?
 17 A. Those -- we have discussed the policies
 18 and procedures. They have been produced. We have
 19 testified about process and I am sure there is
 20 more that I don't know about.
 21 Q. Do you really know what the basis of
 22 the verification is that is signed there or are
 23 you just relying upon Ms. Krieger or whoever else
 24 signs it that they have done their job?
 25 A. No. I am confident about my office's

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1 SUSSMAN
 2 independent review of the file. I am confident
 3 about that.
 4 If you're asking me what the basis of
 5 information -- what Ms. Krieger's basis for
 6 signing a verification is, well, I have stated to
 7 you what that basis might consist of.
 8 Q. But you don't --
 9 A. If you're asking me what is my basis, I
 10 already stated it.
 11 Q. I am trying to understand what that
 12 verification means.
 13 MS. NIGRO: Right, but it is her's.
 14 A. It is her's.
 15 Q. If you don't have personal knowledge as
 16 to what she is actually attesting to, that is
 17 fine, I will ask her. I just want to know whether
 18 you do or don't.
 19 A. I answered the question. The personal
 20 knowledge would come from information maintained
 21 in Northern Leasing's files together with the
 22 policy and procedures in place.
 23 Q. You didn't ask Ms. Krieger, what did
 24 you review to make this verification, did you,
 25 let's say the Serin complaint?

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1 SUSSMAN
 2 A. In so many words I did by presenting a
 3 document for her to sign. That is precisely what
 4 the point of the verification is.
 5 Q. That is not the same thing as asking
 6 her. Did you ask Ms. Krieger with respect to the
 7 Serin complaint, Ms. Krieger, please tell me what
 8 you reviewed that gives you the basis to sign this
 9 verification?
 10 A. I did not ask her that question.
 11 Q. You don't know what she reviewed to
 12 make -- sign the verification, correct?
 13 A. I don't know.
 14 Q. She looked at the complaint, you know
 15 that, and she signed the verification, correct?
 16 A. Correct.
 17 Q. Beyond that, you don't have personal
 18 knowledge?
 19 A. Of Ms. Krieger's --
 20 Q. Review?
 21 A. -- review of the file?
 22 Q. Sufficient to allow her to sign the
 23 verification.
 24 A. I already answered that question.
 25 MR. ALTMAN: We will mark this document

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1 SUSSMAN
 2 as Exhibit 141. It is NLS 1689.
 3 (Exhibit 141, NLS 1689, marked for
 4 identification, as of this date.)
 5 Q. It is a one-page verification form for
 6 the Smith case.
 7 A. Correct.
 8 Q. Have you seen this document before?
 9 A. I believe so.
 10 Q. Can you show me on here where it says
 11 anything about lost damage waivers?
 12 A. No.
 13 MR. ALTMAN: We will mark this document
 14 as Exhibit 142, which is Bates number 1856.
 15 (Exhibit 142, Bates number 1856, marked
 16 for identification, as of this date.)
 17 Q. I will give this to you. It is a
 18 letter from Northern Leasing to Tom Smith,
 19 addressed to Tom Smith.
 20 Do you see a validation clause on that
 21 letter?
 22 A. To the extent that you're referring to
 23 a validation clause pursuant to FDCPA, one is not
 24 required in an effort to collect a debt related to
 25 this account.

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1 SUSSMAN
 2 Q. Do you see --
 3 A. But notwithstanding, there isn't
 4 language that would consist of a validation
 5 clause.
 6 MR. ALTMAN: I will mark Exhibit 143.
 7 It is a letter dated March 29, 2004.
 8 (Exhibit 143, letter dated March 29,
 9 2004, marked for identification, as of this
 10 date.)
 11 Q. It is another letter to Tom Smith. You
 12 see a validation clause?
 13 A. Same answer as previous.
 14 MR. ALTMAN: We will mark Exhibit 144
 15 which is Bates number 1733 through 1741.
 16 (Exhibit 144, Bates number 1733 through
 17 1741, marked for identification, as of this
 18 date.)
 19 Q. These are two faxes from you to Tarly
 20 Dall in the Tom Smith case, T A R L Y, D A L L?
 21 A. Yes.
 22 Q. This appears to be an affidavit that
 23 you drafted on behalf of Tarly Dall in the case of
 24 Northern Leasing versus Tom Smith?
 25 A. Yes.

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1 SUSSMAN
 2 Q. Did you write this declaration for
 3 Tarly Dall?
 4 A. I believe I drafted it.
 5 Q. Was Tarly Dall paid for the time
 6 reviewing this affidavit?
 7 A. No.
 8 MR. ALTMAN: We will mark as 145, Bates
 9 1696 through 1705.
 10 (Exhibit 145, Bates 1696 through 1705,
 11 marked for identification, as of this date.)
 12 Q. Exhibit 145 is a notice of deposition
 13 and document request and interrogatories to Tom
 14 Smith.
 15 A. Right.
 16 Q. Do you think that was the appropriate
 17 level of discovery in a lease dispute case?
 18 A. As stated earlier, under normal
 19 circumstances it would not be for a small dollar
 20 dispute but given Christian Chittur and his law
 21 firm's insistence on litigating this and making
 22 ridiculously high settlement demands instead of
 23 engaging in reasonable settlement, it was the only
 24 course that we could take. So it was entirely
 25 appropriate.

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1 SUSSMAN
 2 MS. NIGRO: For the record, counsel is
 3 addressed on this document notice -- it is
 4 addressed to counsel.
 5 MR. ALTMAN: We will mark as Exhibit
 6 146, Bates number Sussman 2730 through 2735.
 7 (Exhibit 146, Bates number Sussman 2730
 8 through 2735, marked for identification, as of
 9 this date.)
 10 Q. Letter dated July 2, 2003, written by
 11 you?
 12 A. Yes.
 13 Q. It is a letter to Mr. Long Lim?
 14 A. Yes.
 15 Q. It says, the personal guarantee section
 16 of the lease provides that you as guarantor will
 17 be fully responsible for all of the lessees, its
 18 obligations thereunder?
 19 A. Yes.
 20 Q. Is there a validation clause anywhere
 21 on this letter?
 22 A. To the extent that -- same answer as
 23 previous. The same answer as previous to the same
 24 question.
 25 MR. ALTMAN: We will mark as Exhibit

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<p style="text-align: right;">Page 273</p> <p>1 SUSSMAN</p> <p>2 147, a document Bates 1653.</p> <p>3 (Exhibit 147, document Bates 1653,</p> <p>4 marked for identification, as of this date.)</p> <p>5 Q. This says stipulation of</p> <p>6 discontinuance.</p> <p>7 A. Correct.</p> <p>8 Q. Do you see a signature there from Long</p> <p>9 Lim?</p> <p>10 A. No.</p> <p>11 Q. How could that be a stipulation of</p> <p>12 discontinuance without Mr. Lim's signature?</p> <p>13 A. Because in New York, you can</p> <p>14 discontinue an action prior to a answer being</p> <p>15 filed. No answer was filed here.</p> <p>16 It could be that it is technically --</p> <p>17 should be a notice of discontinuance instead of</p> <p>18 stipulation, I am not sure, but what this document</p> <p>19 is doing is discontinuing an action. So the court</p> <p>20 accepts that since it is just dismissing the</p> <p>21 action. That is my understanding of how this</p> <p>22 would work.</p> <p>23 MR. ALTMAN: We will mark Exhibit 148,</p> <p>24 Sussman Bates 629 through 632.</p> <p>25 (Exhibit 148, Sussman Bates 631 and</p>	<p style="text-align: right;">Page 275</p> <p>1 SUSSMAN</p> <p>2 Q. You have to answer my question before</p> <p>3 you can --</p> <p>4 A. I believe this information might have</p> <p>5 been produced in error and should have been</p> <p>6 withheld under privilege.</p> <p>7 Q. That is fine.</p> <p>8 MS. NIGRO: The top portion or the</p> <p>9 entire document?</p> <p>10 THE WITNESS: The top portion.</p> <p>11 Q. I will take your representation about</p> <p>12 that --</p> <p>13 THE WITNESS: Give me a moment.</p> <p>14 MR. ALTMAN: He said the P word. So if</p> <p>15 you want to take it off the table -- now that</p> <p>16 I understand what the issue is, now if you</p> <p>17 need to consult, please do so.</p> <p>18 A. Based on my review of this document, it</p> <p>19 seems to me that I produced this document to</p> <p>20 Mr. Chittur in error and it should have been</p> <p>21 withheld. I didn't realize this document was</p> <p>22 produced.</p> <p>23 MS. NIGRO: The top part?</p> <p>24 THE WITNESS: The top part.</p> <p>25 MS. NIGRO: Not Amy's underlying</p>
<p style="text-align: right;">Page 274</p> <p>1 SUSSMAN</p> <p>2 632, marked for identification, as of this</p> <p>3 date.)</p> <p>4 Q. Just to be clear, documents with your</p> <p>5 Bates numbers on it came out of your files,</p> <p>6 correct?</p> <p>7 A. Correct.</p> <p>8 Q. Whose notes are these?</p> <p>9 A. Can I talk with counsel?</p> <p>10 Q. Sure.</p> <p>11 THE WITNESS: Can we step out?</p> <p>12 MS. NIGRO: Sure.</p> <p>13 THE WITNESS: Can I take this with me?</p> <p>14 MS. NIGRO: I will even give you break</p> <p>15 time.</p> <p>16 Q. Before you confer, there is a question</p> <p>17 pending.</p> <p>18 MS. NIGRO: What is the question?</p> <p>19 (Record read.)</p> <p>20 A. Is the question the printed --</p> <p>21 Q. The first two pages, whose notes are</p> <p>22 those?</p> <p>23 A. Okay. I am not ready to answer that</p> <p>24 question. I wanted to -- before you asked that</p> <p>25 question to confer with counsel.</p>	<p style="text-align: right;">Page 276</p> <p>1 SUSSMAN</p> <p>2 e-mail.</p> <p>3 THE WITNESS: Right, which has been</p> <p>4 produced by NLS directly.</p> <p>5 MR. ALTMAN: I will hand this to you</p> <p>6 now. We will mark the rest of the document as</p> <p>7 Exhibit 148.</p> <p>8 MS. NIGRO: I appreciate you returning</p> <p>9 a document that we are claiming as privileged.</p> <p>10 MR. ALTMAN: I will do that under one</p> <p>11 condition, that you forward that document to</p> <p>12 the judge.</p> <p>13 MS. NIGRO: Fair.</p> <p>14 MR. ALTMAN: Which he had not had an</p> <p>15 opportunity to review so that he can make the</p> <p>16 determination.</p> <p>17 MS. NIGRO: To the extent that it</p> <p>18 wasn't included in the documents that the</p> <p>19 judge has already looked at that Mr. Sussman</p> <p>20 withheld -- sometimes there's multiple copies;</p> <p>21 I can commit to doing that.</p> <p>22 Is that what you were going to say?</p> <p>23 THE WITNESS: Exactly.</p> <p>24 MR. ALTMAN: We will delete or</p> <p>25 segregate the electronic copies of the</p>

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1 SUSSMAN
2 document that we have pending on the
3 resolution of the court.
4 Once we figure out what is going on,
5 then -- there is still the pending issue of
6 whether such a document -- privilege has been
7 waived anyway. We will address that with the
8 court. For right now, we will segregate the
9 document and look at it no further.
10 MS. NIGRO: Okay.
11 THE WITNESS: Thank you.
12 MR. ALTMAN: Bates numbers 629 and 630
13 has been removed from Exhibit 148 because of
14 possible inadvertent production.
15 We are now changing the Bates numbers
16 to Sussman Bates 631 to 632.
17 Q. Please take a look at the bottom
18 paragraph. Who is Amy Tangey?
19 A. She was employed by Northern Leasing.
20 Q. What role did she serve?
21 A. I think as a risk manager.
22 Q. Would you look at the bottom.
23 Would you read for the record the
24 second sentence starting with when compared?
25 A. When compared against the signatures on

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1 SUSSMAN
2 the lease, I lean in the direction of stating that
3 the signatures do not match.
4 Q. That is all you need to read.
5 It was the opinion of the person at
6 Northern Leasing, the risk manager for Mr. Lim,
7 that the signatures didn't match?
8 A. I think I have to read the entire
9 document because there is an opposite perspective
10 mentioned on the second page.
11 Q. I didn't ask you a question about that.
12 A. Sorry. I genuinely misunderstood your
13 question.
14 MR. ALTMAN: Read back the question.
15 (Record read.)
16 A. Correct.
17 MR. ALTMAN: I will mark as Exhibit
18 149, Sussman 639, a single page, a July 9,
19 2001 letter from Lim to Northern Leasing.
20 (Exhibit 149, Sussman 639, marked for
21 identification, as of this date.)
22 Q. Have you seen this letter before?
23 A. I believe so.
24 Q. Did you see it before you filed suit
25 against Mr. Lim?

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1 SUSSMAN
2 A. I don't remember.
3 MR. ALTMAN: I will mark as Exhibit
4 150, Bates 1652.
5 (Exhibit 150, Bates 1652, marked for
6 identification, as of this date.)
7 Q. It is Bates NLS 1652, an August 31,
8 2004 letter.
9 MS. NIGRO: It is 6:45.
10 MR. ALTMAN: Five more minutes.
11 A. Did you ask me a question?
12 Q. I was asking, have you ever seen this
13 document before?
14 A. I don't know.
15 Q. Mr. Sussman, we have reviewed at least
16 in great detail Mr. Russ and Ms. Serin's files,
17 correct?
18 A. Today, you mean.
19 Q. The review we did today we probably
20 spent maybe three hours or so on those two files.
21 How does that compare to the amount of
22 time you would have spent reviewing a file before
23 deciding whether to proceed with a suit?
24 A. That is more time than I would likely
25 spend in reviewing one particular file.

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1 SUSSMAN
2 Q. If you knew everything we discussed
3 today, is there anything that you would have done
4 different in terms of filing any of the lawsuits
5 of the plaintiffs involved in this case?
6 MS. NIGRO: Objection.
7 A. If I knew that my client would spend as
8 much money as it has today defending this
9 litigation because I initiated a lawsuit on these
10 individual files, I most certainly would have
11 recommended -- I most certainly would have not
12 initiated the lawsuit. That alone would have --
13 Q. I appreciate what you're saying, but
14 taking the fact that we are involved in a lawsuit
15 out of it, just purely the review of the
16 information, would you have done anything
17 differently?
18 MS. NIGRO: Objection.
19 A. Yes.
20 Q. What would you have done differently?
21 A. I would -- I don't know what decision I
22 would come to, but if I had all the information
23 that I am aware of today or appreciated that
24 information and decided to initiate a lawsuit, I
25 would have done so in an effort to show that I am

70 (Pages 277 to 280)

<p style="text-align: right;">Page 281</p> <p>1 SUSSMAN</p> <p>2 aware of the -- I would have made an effort to</p> <p>3 draft a complaint that would show that I and my</p> <p>4 client were not proceeding with our eyes blind but</p> <p>5 that we are asserting a claim notwithstanding the</p> <p>6 purported defenses.</p> <p>7 Q. Would you have still filed all the</p> <p>8 claims?</p> <p>9 A. I don't know.</p> <p>10 Q. A couple of last questions. Does</p> <p>11 anybody look at how many claims you process per</p> <p>12 week, per month, per year by some time scale?</p> <p>13 Does anybody analyze your productivity?</p> <p>14 A. I think so.</p> <p>15 Q. Is that somebody at NLS that analyzes</p> <p>16 your productivity?</p> <p>17 A. Yes.</p> <p>18 Q. Do they compare your recovery rate</p> <p>19 versus the amount of time that you spend?</p> <p>20 MS. NIGRO: Objection.</p> <p>21 A. I don't know.</p> <p>22 Q. Do they ever have meetings with you to</p> <p>23 discuss your productivity?</p> <p>24 MS. NIGRO: Objection.</p> <p>25 A. There were likely discussions.</p>	<p style="text-align: right;">Page 283</p> <p>1</p> <p>2 THE VIDEOGRAPHER: The time is now 6:51</p> <p>3 p.m., October 12, 2010. This will conclude</p> <p>4 today's deposition of Mr. Sussman. We are off</p> <p>5 the record now.</p> <p>6 (Time noted: 6:53 p.m.)</p> <p>7</p> <p>8</p> <p>9 JOSEPH I. SUSSMAN</p> <p>10</p> <p>11 Subscribed and sworn to before me</p> <p>12 this day of , 2010.</p> <p>13</p> <p>14</p> <p>15 (Notary Public)</p> <p>16 My Commission Expires:</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 282</p> <p>1 SUSSMAN</p> <p>2 Q. Who was involved in those discussions?</p> <p>3 A. Ricky Brown, Sam Bono and maybe</p> <p>4 previously Sara Krieger.</p> <p>5 Q. Mr. Sussman, thank you.</p> <p>6 MS. NIGRO: It is 6:50.</p> <p>7 Q. Thank you for your time.</p> <p>8 A. Thank you.</p> <p>9 MR. ALTMAN: There are some outstanding</p> <p>10 disputes in terms of some privilege issues</p> <p>11 that we did not resolve. We may resolve those</p> <p>12 things and you may take the position that we</p> <p>13 have used up all our time; we may take a</p> <p>14 different position, but with the exception of</p> <p>15 those issues, you know, we will consider the</p> <p>16 deposition concluded for today.</p> <p>17 MS. NIGRO: Thank you.</p> <p>18 (Continued on next page.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 284</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3 STATE OF NEW YORK)</p> <p>4 ss:</p> <p>5</p> <p>6 COUNTY OF NEW YORK)</p> <p>7</p> <p>8 I, BARBARA DRISCOLL, a Shorthand</p> <p>9 Reporter and a Notary Public within and for the</p> <p>10 State of New York, do hereby certify that the</p> <p>11 foregoing deposition of JOSEPH I. SUSSMAN was taken</p> <p>12 before me on the 12th day of October, 2010;</p> <p>13 That the said witness was duly sworn</p> <p>14 before the commencement of his testimony; that the</p> <p>15 said testimony was taken stenographically by me and</p> <p>16 then transcribed.</p> <p>17 I further certify that I am not related</p> <p>18 by blood or marriage to any of the parties to this</p> <p>19 action or interested directly or indirectly in the</p> <p>20 matter in controversy; nor am I in the employ of</p> <p>21 any of the counsel in this action.</p> <p>22 IN WITNESS WHEREOF, I have hereunto set</p> <p>23 my hand this 25th day of October, 2010.</p> <p>24</p> <p>25 BARBARA DRISCOLL</p>

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2		I N D E X		2	21		
3	Examination	Page		3	1 Bates number 879	194	
4	JOSEPH I. SUSSMAN MR. ALTMAN	5		4	22		
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16	1	supplemental rule 26 disclosures,	35	16	27		
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INFORMATION REQUESTED

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MARKED FOR RULINGS

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1 OCTOBER 12, 2010 - JOSEPH I. SUSSMAN
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3 I wish to make the following changes, for the
4 following reasons:
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